



APR 19 2000

Memorandum

Date *Michael Mangano*
From *for* June Gibbs Brown
Inspector General

Subject Review of Costs Claimed for Federal Financial Participation Under the Title IV-A
Emergency Assistance Program by the Pennsylvania Department of Public Welfare for
Children in Philadelphia County from October 1, 1994 to September 30, 1996
To (A-03-98-00592)

Olivia A. Golden
Assistant Secretary
for Children and Families

This is to alert you to the issuance of our final report on Friday, April 21, 2000. A copy is attached. The objective of our review was to determine if Emergency Assistance (EA) claims submitted by Department of Public Welfare (DPW) for Federal financial participation (FFP) complied with Federal statutes, regulations and guidelines. During the period of our review October 1, 1994 to September 30, 1996, DPW experienced a tremendous growth in the number of claims and the amount of FFP reimbursed under the EA program. In a period of just 2 years, FFP increased dramatically from about \$2.9 million in Fiscal Year (FY) 1994 to about \$250.3 million in FY 1996. In total, DPW was reimbursed \$445.4 million in FFP during our 2-year audit period. Our review covered \$99.6 million of this amount.

We determined that \$77.6 million of the \$99.6 million FFP reviewed, or about 78 percent, was unallowable under Federal criteria. We made this determination based on three different audit methodologies:

- We questioned \$3.2 million in FFP for direct claims on the basis of our computer analysis of probation and truant services which included services provided for more than 12 consecutive months or services that were claimed twice.
- We questioned \$55 million in FFP for direct claims based on our statistical sample of claims invoiced by Philadelphia's Department of Human Services and Family Court.
- We questioned \$19.4 million in FFP for administrative claims on the basis of the violations found in the computer analysis and statistical sample of direct claims.

The EA program was eliminated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which created the Temporary Assistance for Needy Families block grant. We are, therefore, not making any procedural recommendations. We are recommending that DPW:

1. Refund to the Federal Government \$77.6 million associated with unallowable direct and administrative EA claims invoiced by Philadelphia County during our audit period.
2. Conduct a review of all quarterly claims invoiced by Philadelphia County for succeeding periods and determine if the same conditions noted in the audit report continued. Summarized results should be provided to the Administration of Children and Families (ACF) and a refund to the Federal Government for all costs inappropriately claimed.
3. Conduct a similar review of all other Pennsylvania counties except Allegheny County (the Office of Inspector General is auditing Allegheny County) to determine if EA claims for FFP were allowable. Summarized results should be provided to ACF, and a refund to the Federal Government should be made for all costs inappropriately claimed.

By letter dated September 14, 1999, DPW responded to our draft report. The DPW generally disagreed with our findings and recommendations. However, the DPW did not provide any information that caused us to change our position.

Any questions or comments on any aspect of this memorandum are welcome. Please call me or have your staff contact John A. Ferris, Assistant Inspector General for Administrations of Children, Family, and Aging Audits, at (202) 619-1175.

Attachment

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**REVIEW OF COSTS CLAIMED FOR
FEDERAL FINANCIAL PARTICIPATION
UNDER THE TITLE IV-A EMERGENCY
ASSISTANCE PROGRAM BY THE
PENNSYLVANIA DEPARTMENT OF
PUBLIC WELFARE FOR CHILDREN
IN PHILADELPHIA COUNTY
FROM OCTOBER 1, 1994 TO
SEPTEMBER 30, 1996**



JUNE GIBBS BROWN
Inspector General

APRIL 2000
A-03-98-00592



DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
OFFICE OF AUDIT SERVICES
150 S. INDEPENDENCE MALL WEST
SUITE 316
PHILADELPHIA, PENNSYLVANIA 19106-3499

Our Reference: Common Identification Number A-03-98-00592

Mr. Jeffrey Logan
Deputy Secretary for Administration
Pennsylvania Department of Public Welfare
Health and Welfare Building
P.O. Box 2675
Harrisburg, Pennsylvania 17105-2675

Dear Mr. Logan:

Enclosed for your information and use are two copies of an OIG final audit report entitled **"REVIEW OF COSTS CLAIMED FOR FEDERAL FINANCIAL PARTICIPATION UNDER THE TITLE IV-A EMERGENCY ASSISTANCE PROGRAM BY THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE FOR CHILDREN IN PHILADELPHIA COUNTY FROM OCTOBER 1, 1994 TO SEPTEMBER 30, 1996."** Your attention is invited to the audit findings and recommendations contained in the report.

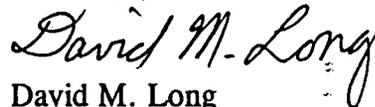
Final determination as to actions to be taken on all matters reported will be made by the HHS official named below. The HHS action official will contact you to resolve the issues in this audit report. Any additional comments or information that you believe may be bearing on the resolution of this audit may be presented at that time. Should you have any questions, please direct them to the HHS official named below.

In accordance with the principles of the Freedom of Information Act (Public Law 90-23), HHS/OIG Office of Audit Services reports issued to the Department's grantees and contractors are made public to the extent information contained therein is not subject to the exemptions in the Act, which the Department chooses to exercise. (See Section 5.71 of the Department's Public Information Regulation, dated August 1974, as revised.)

Page 2 - Mr. Jeffrey Logan

To facilitate identification, please refer to the above common identification number in all correspondence pertaining to this report.

Sincerely yours,



David M. Long
Regional Inspector General
for Audit Services

Enclosure

Reply direct to:

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150 S. Independence Mall West
Philadelphia, PA 19106-3499

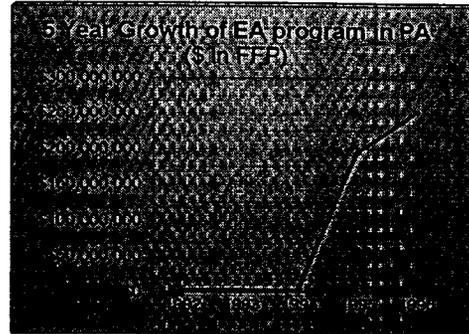
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EXECUTIVE SUMMARY

This audit report presents the results of an Office of Inspector General (OIG) **REVIEW OF COSTS CLAIMED FOR FEDERAL FINANCIAL PARTICIPATION (FFP) UNDER THE TITLE IV-A EMERGENCY ASSISTANCE (EA) PROGRAM BY THE PENNSYLVANIA DEPARTMENT OF PUBLIC WELFARE (DPW) FOR CHILDREN IN PHILADELPHIA COUNTY FROM OCTOBER 1, 1994 TO SEPTEMBER 30, 1996.**

The objective of our review was to determine if EA claims submitted by DPW for FFP complied with Federal statutes, regulations and guidelines (hereafter referred to as Federal criteria). During the period of our review, DPW experienced a tremendous growth in the number of claims and the amount of FFP reimbursed under the EA program. As shown in the chart to the right, the FFP reimbursed to DPW was relatively insignificant until Fiscal Year (FY) 1995 when the FFP increased dramatically. In a period of just 2 years, FFP increased from about \$2.9 million in FY 1994 to about \$250.3 million in FY 1996. In total, DPW was reimbursed \$445.4 million in FFP during our 2-year audit period.



Our review covered \$99.6 million (\$74.8 million for direct claims and \$24.8 for administrative costs) of the \$445.4 million. The FFP we reviewed was for 79,446 claims submitted by DPW for EA services provided to children in Philadelphia County, 1 of 67 counties within the Commonwealth. The FFP consisted of:

- ✓ \$48.3 million for 58,314 Children and Youth (C&Y) claims invoiced by the Philadelphia Department of Human Services (DHS);
- ✓ \$14.1 million for 8,336 Youth Study Center (YSC) claims invoiced by DHS;
- ✓ \$12.4 million for 12,796 children who received Probation and Truant Services (P&TS) invoiced by the First Judicial District of the Pennsylvania Court of Common Pleas, Family Court Division (hereafter referred to as Family Court); and
- ✓ \$24.8 million for DHS administrative costs associated with processing the EA claims.

We determined that \$77.6 million of the \$99.6 million FFP reviewed, or about 78 percent, was unallowable under Federal criteria. We made this determination based on different audit methodologies:

- ☛ ***We questioned \$3,159,537 in FFP for direct claims on the basis of our computer analysis of P&TS provided to 12,796 children.*** We made this analysis to identify children who received services for more than 12 consecutive months which is contrary to Title IV-A regulations, or for whom FFP was claimed twice. We identified 4,643 children who received services for more than 12 consecutive months. The FFP totaled \$3,064,917 for the services provided after the 12-month period. We also identified 157 children for whom services were claimed twice. The duplicate FFP totaled \$94,620.
- ☛ ***We questioned \$55,051,373 in FFP for direct claims on the basis of our statistical sample of 79,289 EA¹ claims invoiced by DHS and Family Court.*** Of the 330 claims reviewed in our sample, 301 had at least one violation of Federal criteria. We found that 166 of the 301 erroneous claims had 2 to 4 violations.
- ☛ ***We questioned \$19,345,913 in FFP for administrative claims on the basis of the violations found in the computer analysis and the statistical sample.*** The combined results of our analysis and statistical sample showed that at least \$58,210,910 of the \$74,760,284 (77.86 percent) in direct claims for specific children violated Federal laws and regulations. The administrative costs associated with the direct claims that contained violations were not allowable.

Types of Claims in Statistical Sample

Our statistical projection was based on our review of 330 randomly selected claims invoiced by the Philadelphia DHS and the Family Court and claimed for FFP by DPW. We stratified the claims reviewed into four distinct types: C&Y claims, YSC claims, P&TS claims, and a supplemental claim for P&TS. Widespread violations of Federal criteria were found in all four types of claims reviewed, with the lowest error rate being 83 percent and the highest error rate being 98 percent. Overall, 301 of the 330 claims reviewed had at least 1 violation, with 166 of the claims having 2 or more violations. As shown in the following table, the 301 claims had a total of 512 violations of Federal criteria.

¹ We excluded the duplications associated with the 157 children who were claimed twice.

CLAIMS WITH VIOLATIONS OF FEDERAL CRITERIA							
Violations Per Claim	C&Y	YSC	P&TS	Supplemental P&TS	Total Claims	Percent	Total Violations
1	42	46	40	7	135	45%	135
2	30	44	34	15	123	41%	246
3	19	7	9	6	41	13%	123
4	1	1	0	0	2	1%	8
Total	92	98	83	28	301	100%	512
Claims Reviewed	100	100	100	30	330		

Types of Violations Associated with Claims in Statistical Sample

All 330 claims involved children under the age of 21, who were therefore age-eligible for the EA program. However, as shown in the table below, we identified 10 types of violations of Federal criteria associated with the 301 claims that contained at least 1 violation.

TYPES OF VIOLATIONS		
Violations	Number of Violations	Projected Amount (FFP)
Eligibility of the Child		
Child Did Not Live With Specified Relative	25	\$7,063,477
Eligibility of the Service		
No Signed Application by Parent or Guardian	241	\$89,344,520
Application/Authorization Was Backdated	65	\$19,734,370
Improper Authorization	34	\$1,630,243
Service Provided Outside the 12-Month Service Window	51	\$23,322,257
Unauthorized Claim Within 12-Month Service Window	54	\$9,045,238
EA Supplemented Another Federal Program	23	\$5,273,055
Lack of Support for Claim	14	\$1,361,252
Claim for Delinquent Child After December 31, 1995	4	Not Estimated
Duplicate Billing for Same Service	1	Not Estimated
Total	512	

The projected amounts shown in the above table can be used only to show the estimated effect of the individual violations on DPW claims for FFP. The amounts do not reconcile with our recommended financial adjustment of \$55,051,373 based on the results of the statistical sample because: (1) about 55 percent of the claims with a violation had more than one and our recommended financial adjustment does not duplicate the violations, and (2) the above amounts are the statistical mid-point estimates while our recommended financial adjustment is based on the lower limit estimate.

Conclusions and Recommendations

In our opinion, the tremendous growth in the claims for FFP during the 2 years of our review resulted from program expansion accompanied by widespread noncompliance with Federal criteria by DPW, DHS and the Family Court caused by DPW's desire to maximize FFP. The DPW circumvented Federal criteria by disregarding such fundamental principles of the EA program as the child's living arrangements prior to applying for assistance, the role of parents/guardians in the application process, and the 12-month window in which services could

be provided. A clear indication of DPW's motivation is the widespread backdating of applications and authorizations by Philadelphia DHS and Family Court representatives which made ineligible claims appear to be eligible for FFP. We estimate that at least \$58,210,910 in FFP reimbursed to DPW during this period was for unallowable direct claims. The DHS claimed an additional \$19,345,913 in FFP for administrative costs to process the claims that violated Federal laws and regulations.

The EA program was eliminated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which created the Temporary Assistance for Needy Families (TANF) block grant. We are, therefore, not making any procedural recommendations. We recommend that DPW:

1. Refund to the Federal Government \$58,210,910 for FFP associated with unallowable EA claims invoiced by the Philadelphia DHS and Family Court in FYs 1995 and 1996.
2. Conduct a review using statistical sampling techniques of all quarterly claims submitted by Philadelphia DHS and Family Court (including Adjusting and Supplemental claims) totaling \$14,478,202 and reimbursed for FFP after October 1, 1996, and determine if the same conditions we noted in this report continued. Summarized results should be provided to the Administration for Children and Families (ACF), and a refund to the Federal Government should be made for all costs inappropriately claimed.
3. Conduct a similar review of all other Pennsylvania counties except Allegheny County (the OIG intends to audit Allegheny County) to determine if EA claims for FFP were allowable. Summarized results should be provided to ACF, and a refund to the Federal Government should be made for all costs inappropriately claimed.
4. Refund to the Federal Government \$19,345,913 for FFP claimed for FY 1995 and 1996 administrative costs allocated to the EA program for processing claims that violated Federal laws and regulations and review and adjust administrative costs for succeeding periods.

By letter dated September 14, 1999, DPW responded to a draft of this report. The DPW generally disagreed with our findings and recommendations. We have reviewed DPW's response and have included it as Appendix C to this report. We have also summarized their response and our comments after each applicable finding area of this report. However, we have not made any changes to the findings contained in the report as a result of DPW's response.

INTRODUCTION

BACKGROUND

EA Program

Title IV-A, Section 406(e) of the Social Security Act (amended by Public Law 90-248) established the EA program as an optional supplement to the Aid to Families with Dependent Children (AFDC) program. The EA program was a federally sponsored State-administered program. The purpose of the program was to provide temporary financial assistance and supportive services to eligible families experiencing an emergency. Services provided under the EA program were reimbursed at a 50 percent FFP rate to the extent that the services were not already reimbursed under the Federal Foster Care or Medicaid programs.

The 45 CFR 233.120 stated that EA services could only be provided to or on behalf of a needy child under the age of 21 and any member of the household in which: (1) such child was living (or had been living in the prior 6 months) with a specified relative, (2) the child was without available resources to meet the emergency, (3) the assistance was necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and (4) the destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment.

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 eliminated AFDC, EA, and the Job Opportunity and Basic Skills programs as of FY 1997 and created the TANF block grant.

Pennsylvania's State Plan

The DPW was the single State agency designated to administer the EA program. In the spring of 1994, DPW submitted and ACF approved amendments to the EA portion of the Title IV-A State plan. State plan transmittal No. TN-94-01-AFDC, effective April 1, 1994 expanded Pennsylvania's EA program to cover shelter care, foster care, or residential group care (including juvenile detention services and secure residential services at a private or public facility) for children separated from their parents, unless the child had such assistance provided under Title IV-E. As a result of DPW's implementation of the 1994 State plan amendment, EA costs in Pennsylvania rose from about \$5.7 million in 1994 to over \$500.6 million in 1996, and the FFP reimbursed increased from about \$2.9 million to about \$250.3 million, an increase of 8,531 percent.

The ACF issued an Action Transmittal ACF-AT-95-9 on September 12, 1995 to notify State agencies that effective January 1, 1996, FFP was not available under the EA program for costs associated with providing benefits or services to children removed from the household as a result

of the child's alleged, charged, or adjudicated delinquent behavior. Any claims for juvenile justice system costs incurred after January 1, 1996 were to be disallowed.

Types of Claims

Philadelphia's DHS submitted Quarterly Summary Invoices to DPW for EA services. The types of claims listed on the Quarterly Summary Invoices included the DHS Children and Youth Division C&Y claims and the Division of Juvenile Justice Services (DJJS) YSC claims. The C&Y claims were for placement costs for delinquent children, foster care, counseling services, group homes, day care and emergency shelter. The DHS officials requested EA and determined eligibility for the EA services. Administration costs associated with the EA program were claimed separately. The DJJS managed the YSC and submitted claims for the costs of housing children and running a detention center. Philadelphia's YSC provided short term secure detention services to adolescents alleged to have committed delinquent acts.

The Family Court submitted Quarterly Summary Invoices to Pennsylvania's Juvenile Court Judges Commission (JCJC). The JCJC consolidated the Quarterly Summary Invoices (QSIs) for Pennsylvania's 67 counties and submitted the QSIs to DPW. Family Court claims were for probation and truant related costs such as salaries, travel and office expenses for probation and truant officer's services.

The DPW consolidated the QSIs from the 67 counties in Pennsylvania and the JCJC and submitted a Quarterly Statement of Expenditures (ACF-231) report to ACF for FFP.

Pennsylvania Emergency Assistance Program System

The Pennsylvania Emergency Assistance Program System (PEAPS) was developed by the Commonwealth to track children eligible to receive EA benefits. The DHS and Family Court officials entered data from EA applications into the PEAPS. The Family Court used PEAPS to summarize the number of children with EA applications who received probation or truant services each quarter and to prepare the QSIs that it sent to the JCJC. The Family Court billed the JCJC on a flat rate basis, billing all children the same rate per month without regard to the number of probation officer visits received by each child.

The EA applications in Philadelphia were entered into PEAPS by DHS case workers or Family Court probation officers. Philadelphia maintained its own PEAPS database and sent data to DPW's Information Systems Department which updated a statewide PEAPS database.

OBJECTIVE, SCOPE AND METHODOLOGY

OBJECTIVE

The objective of our audit was to determine if EA costs of \$199.2 million reported by the Philadelphia DHS and Family Court for FYs 1995 and 1996 and subsequently claimed by DPW met Federal criteria pertinent to the Title IV-A EA program. The FFP claimed totaled about \$99.6 million.

SCOPE

As shown in the table below, our audit covered 79,446² claims for which DPW was reimbursed about \$74.8 million in FFP for services between October 1, 1994 and September 30, 1996 (FYs 1995 and 1996).

PHILADELPHIA EMERGENCY ASSISTANCE CLAIMS REVIEWED (\$ in millions)			
Type of Claim	# of Claims	Total Cost (Millions)	FFP (Millions)
Children and Youth (C&Y)	58,314	\$96.7	\$83.3
Youth Study Center (YSC)	8,336	28.1	14.1
Family Court Probation / Parole Services	12,796 *	24.7	12.3
Total Reviewed	79,446	\$149.5	\$74.8

* number of children that were claimed

In addition, Philadelphia DHS claimed \$24.8 million in FFP for administrative costs associated with processing the 79,446 claims.

² We excluded from this review 4,362 claims totaling about \$6.6 million in FFP for direct claims and \$4.7 million in FFP for associated administrative cost which were included in a separate OIG audit report entitled Review of Costs Claimed Under the Title IV-A Emergency Assistance Program by the Pennsylvania Department of Public Welfare for Children in the Philadelphia Juvenile Justice System for the Period January 1, 1996 Through June 30, 1996. CIN: A-03-98-00590, dated September 10, 1998.

METHODOLOGY

We conducted our audit in accordance with generally accepted government auditing standards. We reconciled costs claimed by Philadelphia's DHS and the Family Court on FY's 1995 and 1996 Quarterly Summary Invoices to the ACF-231 reports prepared by DPW and submitted to the Federal Government. We also reviewed financial accounting records, EA Quarterly Summary Invoices, PEAPS, Federal and State laws and regulations, Departmental Appeals Board Decisions, and DPW, DHS and Family Court policies and procedures.

We conducted the audit using two audit methodologies. We used the PEAPS data base to identify all children who received P&TS services for more than 12 consecutive months or for whom FFP was claimed twice. We also selected a scientific random sample of 330 of the 79,289 individual EA claims submitted in FYs 1995 and 1996. Our sample universe consisted of C&Y claims listed on eight claim rosters attached to Quarterly Summary Invoices, YSC claims listed on six claim rosters attached to Quarterly Summary Invoices, Family Court claims listed on the PEAPS and a supplemental claim (children in State-operated institutions such as forestry camps). Appendix A explains our methodology to develop our sample. Appendix B details the projection of sample results.

For each of the 330 claims reviewed, we obtained supporting information which typically included EA applications and authorizations, vendor vouchers to support EA claim amounts, criminal records, and C&Y service histories. We compared the information obtained for each claim against Federal criteria for the EA program. We also performed other auditing procedures we considered necessary under the circumstances.

Some of the claims that we reviewed were partially allowable. For example, if the claim period exceeded 12 consecutive months in violation of Federal criteria, the claimed amount representing the initial 12 months could have been allowable, while the portion of the claim representing the 13th month forward was unallowable. Also, if the county had support for a portion of the claim but not the entire claim, we accepted the portion that could be supported.

We performed field work at DPW and JCJC both located in Harrisburg, Pennsylvania. We also performed field work at Philadelphia DHS, Children and Youth Division and Division of Juvenile Justice Services in Philadelphia, and at the First Judicial District of Pennsylvania Court of Common Pleas in Philadelphia. Our field work was conducted between February 1998 and September 1998.

RESULTS OF REVIEW

Our review of claims invoiced by the Philadelphia DHS and the Family Court and submitted by DPW for FFP disclosed widespread violations of Federal criteria.

Of the \$74,760,284 in FFP reimbursed to DPW for direct claims, we estimate that at least \$58,210,910 was based on unallowable claims. Our estimate is based on: (1) a computer analysis of Family Court P&TS claims which identified children who received services for more than 12 consecutive months or for whom services were claimed twice; and (2) a statistical sample selected from the 79,289 EA claims invoiced by DHS and the Family Court for FYs 1995 and 1996.

The OIG estimates that widespread violations of Federal criteria by DPW, DHS and Family Court resulted in DPW being reimbursed at least \$77,556,823 in FFP for unallowable claims for services and associated administrative costs under the Title IV-A EA program.

We estimate that at least \$19,345,913 of the \$24,847,050 in FFP reimbursed to DPW for administrative claims in Philadelphia County were associated with the processing of unallowable claims. The combined results of our analysis and statistical sample showed that at least \$58,210,910 of the \$74,760,284 (77.86 percent) in direct claims for specific children violated Federal laws and regulations. The administrative costs associated with the direct claims that contained violations are not allowable.

By letter dated September 14, 1999, DPW responded to a draft of this report. The DPW generally disagreed with our findings and recommendations and has commented on most of the individual error classifications. The DPW claimed that they were given insufficient time to review source documentation and were thus unable to assess the individual sample errors. The DPW has also challenged the OIG's authority to conduct the audit, claiming that the audit was prohibited by Federal law and that the OIG has applied audit criteria which was never communicated to the States. We have summarized DPW's response in the following paragraphs along with our comments. The entire DPW response is included as Appendix C to this report.

Insufficient Time to Review Cases

DPW Response

The DPW believed that OIG failed to provide sufficient time to review source documentation in Philadelphia and, as a result, DPW was unable to assess the individual sample errors in the report.

OIG Comment

Contrary to the position expressed in their comments, the DPW had sufficient time to prepare comments on all cases and findings contained in the audit. For example, in October and November 1998, the OIG permitted DPW to copy all workpapers related to the findings contained in the audit, thus providing the DPW with over 10 months to review cases and workpapers. We believe that this is more than sufficient time to review the audit results. The OIG briefed county and DPW officials on the results of field work and identified the individual cases that were questioned. The OIG also granted a request by DPW for an additional 30 days over the 30 days normally given to respond to the draft audit report. Furthermore, DPW is not precluded from providing additional comments during the audit resolution process.

OIG Audit was Prohibited by Federal Law

DPW Response

The DPW stated that when welfare reform was enacted into law in 1996, Congress provided Federal instruction for winding up the outstanding accounts related to the repealed Title IV-A programs including Emergency Assistance (EA). Section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) explicitly stated that the head of each Federal Agency “shall use the single audit procedure to review and resolve any claims in connection with the close out of programs” under Title IV-A. While the Single Audit Act does not limit the authority of OIG to conduct additional audits, 31 U.S.C. §7503(c), PRWORA clearly states that the closing out of accounts between the State and Federal governments is to be accomplished via the single audit procedure, not an exception to that procedure.

OIG Comment

The OIG audit was not prohibited by Federal law. As DPW’s response to our draft report acknowledges “the Single Audit Act does not limit the authority of the OIG to conduct additional audits.” The President’s Council on Integrity and Efficiency Policy Statement Number 6 dated May 1992, states that in addition to A-133 requirements, organizations are still subject to other audits. The Office of Management and Budget Circular A-133 does not limit Federal authority to make additional audits or reviews. Furthermore, the OIG retains a primary right to conduct audits and access records as set forth in the OIG enabling legislation, specifically the Inspector General Act, as amended, 5 U.S.C. App.

Also, we believe that the audit we performed does not constitute a “close-out” of the Title IV-A grant but instead concerns the allowability of claims made during the latter stages of that program.

OIG Applied Audit Criteria Which Was Never Communicated to the States

DPW Response

The DPW's response indicated that the EA criteria was not communicated to the States. The DPW stated that Federal law is clear that the propriety of expenditures made under a Federal grant-in-aid program such as EA must be judged " by the law in effect when the grants were made." *Bennett v. New Jersey*, 470 U.S. 632, 105 S.Ct. 1555 (1985). Under the Freedom of Information Act (FOIA), States may not be bound by Federal interpretations unless they are either published, properly indexed, or the State has "actual and timely notice of the terms thereof" 5 U.S. C. §552(a)(1). In the words of the Department of Health and Human Services' (HHS) own Departmental Appeals Board, "the State cannot be fairly held to the Agency's interpretation if the State did not receive adequate, timely notice of that interpretation in the context where there was another reasonable interpretation relied on by the State." Illinois Department of Children and Family Services, DAB No. 1335 (1992).

The DPW believed that under the foregoing basic principles of Federal grant law, OIG had a duty to validate the legal effectiveness of the audit criteria it applied to Pennsylvania by insuring that each criterion was both officially adopted as policy by the Administration for Children and Families (ACF) and was communicated to the States in a timely fashion. Such validation of the audit criteria is part of the planning, due professional care, and independence requirements basic obligations imposed by Government Audit Standards (GAS). Without such validation, OIG is not conducting a bona fide professional audit. The audit becomes a political and rhetorical document which shows only the amounts of money which might have been saved had more restrictive criteria been legally adopted and communicated to the States.

The DPW stated that OIG did not validate the legal effectiveness of the audit criteria applied in this matter and, as a result, the audit here is not an audit at all in the professional sense of the word. As noted above, the analysis only shows the amounts of money which might have been saved had the program been run differently by ACF. This point is perhaps best illustrated by the draft report's citation to a conversation with an unidentified ACF official as the source for OIG's conclusion that "longstanding Office of Family Assistance policy required that the individual family, not the State agency, had to file an application for EA benefits and services." report, P. 13. The anonymous official's interpretation plainly conflicts with the cited underlying regulation which expressly states that an application can be filed by an authorized representative or someone acting responsibly for the applicant. 45 CFR 206.10(a)(1)(ii). Moreover, the anonymous official's response interpretation has never been communicated to the States or even officially adopted by ACF. The fact that OIG cited Pennsylvania for a \$39 million overpayment based upon an interpretation which is facially inconsistent with the language of the underlying regulation, and which interpretation was provided by an ACF official whose name is not even disclosed in the report, demonstrates why DPW rejects the findings of the OIG analysis as unreliable and wrong.

OIG Comment

We believe that the State misinterprets a provision of the Federal Freedom of Information Act at 5 USC 552(a)1. The Act does not provide, as submitted by the State, that “States may not be bound by Federal interpretations unless they are either published, properly indexed, or the State has ‘actual and timely notice of the terms thereof.’” Rather, Section 522(a)(1) requires that “[e]xcept to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published.” A threshold question in determining whether this provision applies is whether requirements are “required to be published in the Federal Register.” In conducting the audit, we relied on the law, published regulations, or formal guidelines such as ACF action transmittals. The law, regulations and guidelines were in effect and valid when the claims were filed and, to our knowledge, the binding nature of ACF guidelines has not been questioned by the Departmental Appeals Board or the courts. In any event, we believe that the State had actual and timely notice of all guidelines on which we are relying.

All criteria used by the OIG originated from the Code of Federal Regulations (CFRs), Federal laws, or action transmittals as cited in the report.

We agree with DPW that criteria needs to be communicated to the states. The EA criteria was communicated to the States using the CFRs and action transmittals. Our audit was part of an overall audit that was conducted in several States. The ACF officials validated that the laws and regulations that were applied were in effect and valid when the claims were filed. For example, 45 CFR 234.120 and Action Transmittal SSA-AT-78-44 state that eligibility must be based on an application which also indicates the applicant’s personal intent to apply for assistance. The ACF Official quoted in the report, did not conflict with the regulation but supported the regulation. Also, it is OIG audit policy not to identify specific individuals by name in our reports.

As to whether the audit was invalid because of an alleged failure to “validate the legal effectiveness of the audit criteria,” we consulted as appropriate with legal counsel and with ACF officials and have indeed validated that we are applying all criteria correctly.

We have responded further below to the State’s particular concerns regarding the application of those criteria and believe all our findings are fully supported.

COMPUTER ANALYSIS OF P&TS CLAIMS

We are questioning FFP of \$3,159,537 based on our analysis of the PEAPS which showed that the Family Court invoiced P&TS claims for FFP of:

- ☛ \$3,064,917 for services provided to 4,643 children after the expiration of the 12-month service window established by Federal criteria; and
- ☛ \$94,620 for services provided to 157 children who were claimed twice.

The Philadelphia Family Court used the PEAPS database to identify children on probation or receiving truant services who had an EA application information on file. During FYs 1995 and 1996, the Family Court identified 12,796 children as EA eligible. The FFP claimed and reimbursed for these children totaled \$12.4 million. These claims represented costs associated with salaries of Philadelphia probation officers and other operating costs including supplies and travel costs for the probation officers to visit children. Since quarterly P&TS claims were made based on data contained in PEAPS, we were able to use PEAPS to review the total claim for a child regardless of how many quarters the child was claimed. We analyzed the PEAPS data to identify claims made for services beyond the 12-month window and for children who were claimed twice.

**Children Receiving Services
for More Than 12 Consecutive Months**

Our reviews of P&TS claims recorded on the PEAPS showed that 4,643 of 12,639 children (we excluded the duplicated 157 children) claimed by the Family Court received services that extended beyond the 12-month service

window established by Federal criteria. EA authorizations are valid for only 12 consecutive months according to the Social Security Act section 603(b)(3) and section 406 (e)(1), and 45 CFR section 233.120(b)(3). The FFP reimbursed totaled \$3,064,917 for services provided to the 4,643 children beyond the 12 month service window. We excluded these costs from our statistical sample. The children were included in our sample since the FFP reimbursed on their behalf during the initial 12-month period may also have been unallowable.

Children Claimed Twice for FFP

Our analysis of PEAPS data showed that there were 157 children for whom the same services were claimed twice. The 157 double billings totaled \$94,620 in FFP. We identified the 157 children by

matching last names, first names and dates of birth. The 157 children matched on all 3 items. We eliminated the duplications from further review and sampling.

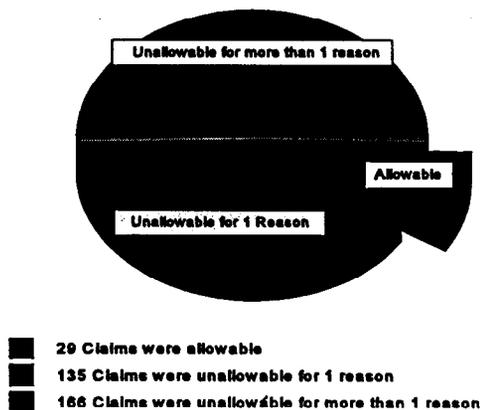
DPW Response

The DPW did not specifically comment on the OIG's computer analysis of P&TS claims.

RESULTS OF STATISTICAL SAMPLE

We statistically sampled 79,289 EA claims invoiced by the Philadelphia DHS and the Family Court. The FFP for these claims totaled \$71,600,747. Using a standard scientific estimation process, we estimate with 95 percent confidence that DPW claimed and was reimbursed FFP of at least \$55,051,373 for claims that violated provisions of the Federal criteria (this estimate is the lower limit of the 90 percent two-sided confidence interval). Our projection was based on our review of 330 statistically selected claims out of the sample universe. Our projection is an unduplicated error projection and, therefore, does not take into account the fact that over 50 percent of the claims reviewed were not in compliance with two to four provisions of the Federal criteria as shown in the following chart.

SUMMARY RESULTS OF SAMPLE



Types of Claims in Sample

Our sample consisted of 100 C&Y claims and 100 YSC claims invoiced by DHS, and 100 P&TS claims and 30 supplemental P&TS claims invoiced by the Family Court. Widespread violations of Federal criteria were found in all

types of claims as shown in the following table.

TYPES OF CLAIMS				
Type	Number Sampled	Value of Items Sampled (FFP)	Number of Violations	Value of Violations (FFP)
C&Y	100	\$80,256	163	\$75,241
YSC	100	158,558	159	157,910
P&TS	100	77,710	135	59,627
Supplemental	30	33,214	55	30,940
Total	330	\$349,738	512	\$323,718

C&Y Claims

We randomly selected our statistical sample of 100 C&Y claims from a population of 58,314 claims made on 8 quarterly claim rosters submitted to DPW for FYs 1995 and 1996. These claims totaling \$48.3 million in FFP were for Placement Costs for Delinquent Children, Foster Care, Counseling, Group Homes, Day Care and Emergency Shelter services. The 100 C&Y claims reviewed totaled \$80,256 in FFP. We determined that 92 of the claims totaling \$75,241, or 94 percent of the amount reimbursed, violated one or more of the provisions of Federal criteria. The 92 erroneous claims had 163 specific violations.

YSC Claims

We randomly selected our statistical sample of 100 YSC claims from a population of 8,336 claims made on 6 quarterly claim rosters submitted to DPW for FYs 1995 and 1996. These claims totaling \$14.1 million in FFP were for juvenile justice system housing costs associated with operating a detention center. Children entered a detention center as a result of alleged, charged, or adjudicated delinquent behavior. The 100 YSC claims reviewed totaled \$158,558 in FFP. We determined that 98 of the claims totaling \$157,910, or 99 percent of the amount reimbursed, violated one or more provisions of Federal criteria. The 98 erroneous claims had 159 specific violations.

P&TS Claims

We randomly selected a statistical sample of 100 P&TS claims from a population of 12,391 children claimed on quarterly claims based on PEAPS data. These claims, totaling \$8.9 million

in FFP, were for probation and truant related costs such as salaries, travel and office expenses of probation and truant officers. The 100 claims reviewed totaled \$77,710 in FFP. We determined that 83 of the claims totaling \$59,627, or 77 percent of the amount reimbursed, violated one or more provisions of Federal criteria. The 83 claims contained 135 specific violations.

Supplemental P&TS Claim

We randomly selected our statistical sample of 30 P&TS claims from a population of 248 claims totaling \$273,223 in FFP included in a supplemental claim. The supplemental claim was based on children in a State-run facility, who were initially not claimed by the Family Court because the Commonwealth of Pennsylvania paid the incarceration costs. On October 12, 1995, DPW informed the Family Court that it had compiled a list of children who, according to the DPW management information system, were in a state facility for some period since April 1, 1994, the effective date of the State plan amendment that expanded the EA program.

The DPW staff compared this list of juveniles to the EA eligible juveniles reported by counties through PEAPS, and subsequently generated a list of juveniles who, according to their records, were in placement at a state facility and not entered into PEAPS. The DPW told the counties to determine eligibility, complete EA applications, and enter data into PEAPS. The Family Court's probation department could subsequently invoice the additional case months created on the PEAPS database as a result of new entries. The Family Court entered the children who were identified by DPW into PEAPS and prepared a supplemental claim. However, Family Court did not prepare EA applications for these children.

The 30 supplemental P&TS claims totaled \$33,214 in FFP. We determined that 28 of the claims totaling \$30,940 in FFP, or 93 percent of the amount reimbursed, violated one or more provisions of the Federal criteria. The 28 erroneous claims had 55 specific violations.

Types of Violations in Sample

We found no violations of Federal criteria involving the age of the children. All the children were under the age of 21 and, therefore, age-eligible for the EA program.

We did identify several other types of violations, however, of which one pertained to the ineligibility of the child and nine to the ineligibility of the service, as shown below.

TYPES OF VIOLATIONS			
VIOLATIONS	Number of Violations	FFP in Violations	Projected Amount (FFP)
Ineligibility of the Child			
Child Did Not Live With Specified Relative	25	\$32,797	\$7,063,477
Ineligibility of the Service			
No Signed Application by Parent or Guardian	241	\$276,127	\$9,344,520
Application/Authorization Was Backdated	65	\$48,785	\$19,784,370
Improper Authorization	34	\$30,172	\$4,630,948
Service Provided Outside the 12-Month Service Window	51	\$47,182	\$25,352,257
Unrelated Claim Within 12 Month Service Window	54	\$80,330	\$9,048,248
EA Supplemented Another Federal Program	23	\$5,621	\$3,278,055
Lack of Support for Claim	14	\$10,429	\$1,361,252
Claim for Delinquent Child After December 31, 1995	4	\$20,590	Not Estimated
Duplicate Billing for Same Service	1	\$811	Not Estimated
Total	512	\$552,844	

Because most of the erroneous claims had multiple violations, our estimates for the individual violations are not mutually exclusive of each other and should not be added together. The individual estimates are presented only to show the possible effect the individual violations had on DPW's claims for FFP.

Child Did Not Live With Specified Relative

Twenty-five claims in our statistical sample of 330 claims involved children who did not live with a specified relative at least 6 months prior to application for EA and who were therefore ineligible for EA services. The 25 children were either incarcerated in State-operated forestry camps or detention centers or were living in residential settings for the 6-month period preceding the EA application date. Projecting

Sample Strata	Sample Population	# of Claims with Violation	Error %
OSV	100	6	6.0%
ISC	100	1	1.0%
Family Court	100	4	4.0%
Supplemental	30	4	16.7%
Totals	330	25	

these errors to the universe of claims, we estimate that DPW was reimbursed \$7,063,477 in FFP for claims for ineligible children. Aside from this violation, 22 of the 25 claims violated at least 1 other provision of the Federal criteria.

Federal Criteria

A child must have lived with a specified relative within 6 months prior to an application for EA. The 45 CFR 233.120 (b)(1)(i) states such child is (or within 6 months prior to the month in which such assistance is requested has been) living with any of the relatives specified in section 406(a)(1) of the Act in a place of residence maintained by one or more of such relatives as his or their own home.

Section 406(a) of the Social Security Act defines “dependent child” as a needy child who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States), or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home.

Audit Results

Of the 330 claims sampled, 25 were for children who did not live with a specified relative during the 6 months prior to the EA application. The 25 claims totaled \$65,594 for which DPW was reimbursed FFP of \$32,797. We are questioning the entire amount of the FFP.

Twenty claims involved children who were incarcerated during the entire 6 months prior to the EA application. For example, a child was arrested for known possession of a controlled substance, possession with intent to deliver a controlled substance and possession of drug paraphernalia. He was committed to an institution for delinquents where he remained from August 24, 1993 to July 7, 1995. On February 21, 1995, a DHS representative prepared an EA application for this child authorizing EA services as of April 1, 1994, the effective date of the State plan amendment which expanded the EA program. At the time the application was prepared, the child had already been institutionalized for about 18 months and, therefore, could not have lived with a specified relative during the 6 months prior to the application.

Five claims were for children in residential settings. For example, DHS placed a child in residential services on October 4, 1994. The DHS prepared an EA application for the child dated June 1, 1995, which was about 8 months after the child was placed in a residential setting. Since the child did not live with a specified relative 6 months prior to the date of application, the child was not eligible for EA.

We noted that the EA application form used by DHS and Family Court required the official determining eligibility to ascertain if the child lived with a parent or specified relative. However, the form stated that it was not necessary for the child to have been removed from the home but only that the child resided with a specified relative as briefly as a single overnight stay within the last 6 months. In our opinion, visiting with a specified relative for just 1 night over a 6-month period is not living with a specified relative, particularly when the child spent the remainder of the time incarcerated or in a residential setting. Moreover, for 2 of the 25 children, EA services were authorized even though the application form had the box checked that the applicant had not lived with a specified relative during the 6 months prior to EA application. Philadelphia officials who prepared many of the EA applications told us that they had no contact with the children or parents. These officials stated they merely handled the paperwork.

We found that 22 of the 25 claims violated other provisions of the Federal criteria. The most prevalent of the violations pertained to the lack of a proper signature on the application form supporting the claim. Nineteen of the claims were not supported by properly signed EA applications. In total, the 25 claims contained 36 other violations.

DPW Response

The DPW stated that the OIG appears to have determined a case to be erroneous whenever the child was in residential care more than 6 months prior to the date EA was authorized.

The DPW believed that the OIG ignored Federal policy which establishes the date of the report of abuse or neglect as the date of application for EA. A child who was living with a specified relative within 6 months of the date of such a report is eligible for EA regardless of the date when the EA service eligibility form was completed.

OIG Comment

We are not aware of any Federal policy that establishes the date of the report of abuse or neglect as of the date of application for EA. Federal Policy at 45 CFR 233.120 (b)(1)(i) is clear that a child must have lived with a parent or specified relative for 6 months prior to the month in which assistance is requested. Pennsylvania's own EA authorization form contains this requirement. The OIG relied on dates contained on DPW's State designated EA applications and authorizations.

In the cases we disallowed for children not living with a specified relative 6 months prior to the EA claim, the EA case files contained no reports of child abuse or neglect. Furthermore, we requested that the Statewide Child Abuse and Neglect Hotline (otherwise known as Child Line) match the children in our sample to their database of reported abuse and neglect cases. The Child Line did not provide us with any report of the children being abused or neglected. Most of the cases contained in this finding were for children who were incarcerated or were in a

residential foster care setting for an extended period of time (up to several years) prior to April 1, 1994, the effective date of Pennsylvania's expanded EA program.

No Signed Application by Parent or Guardian

A total of 241 claims in our statistical sample of 330 claims were not supported by properly signed applications for EA. Only 32 of the 330 claims in our sample contained the proper signature of a parent or guardian. There were also 57 claims for dependent children who may have been abused or neglected. In these cases we accepted an authorized representative's signature in place of a parent's signature. For the remaining 241 claims: 15 had no applications, 15 had unsigned applications, and 211 had applications signed by representatives

Sample Strata	Sample Population	# of Claims with Violation	Error %
O&Y	100	42	42.0%
YSC	100	97	97.0%
Family Court	100	75	75.0%
Supplemental	30	27	90.0%
Totals	330	241	

of the Philadelphia DHS or Family Court. With 1 exception, there was no evidence for the 211 claims that parents or guardians were contacted to obtain their signatures, to determine if they were incompetent or incapacitated, or to notify them of the authorization of EA services.

Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$39,844,520 in FFP for claims which were not supported by an EA application signed by a parent or guardian. Aside from this violation, 138 of the 241 claims violated at least 1 other provision of the Federal criteria.

Federal Criteria

The process for obtaining EA benefits began with a valid application for assistance. The process required an application filed by an adult member of the family on behalf of a child under 21 years old. The Federal criteria listed below deals with the application in terms of intent and signature. The criteria also deals with notifying the applicant upon authorization of services and the need to support eligibility or ineligibility in the case record.

- The 45 CFR 206.10(a)(1)(ii) states the Agency "shall require a written application, signed under penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitated, someone acting responsible for him."
- The 45 CFR 234.120 and Action Transmittal SSA-AT-78-44 states that eligibility must be based on an application which also indicates the applicant's personal intent to apply for assistance. A determination must be made that the individual meets the conditions of eligibility for EA under the State plan.

- The 45 CFR 206.10(b)(2) states that “An application is the action by which an individual indicates in writing to the agency administering public assistance (on a form prescribed by the State Agency) his desire to receive assistance.”
- The 45 CFR 206.10(a)(4) states that “Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual’s right to request a hearing.”
- The 45 CFR 206.10(a)(8) states “Each decision regarding eligibility or ineligibility will be supported by facts in the applicant’s or recipient’s case record.”

According to an ACF official, a longstanding Office of Family Assistance (OFA) policy required that the individual family, not the State agency, had to file an application for EA benefits and services. The applicant had to be able to choose to either apply or not apply for assistance. In the EA program, OFA allowed a limited exception to the individual or family filing the application in child abuse and neglect cases. In situations where immediate intervention was necessary to protect the child from abuse or neglect and where the parent or another responsible adult member in the household was unwilling or incompetent to apply for EA, a designated State agency official could complete and sign an application on behalf of the child and eligible family members. However, upon completion of such an application, the State agency had to notify the child’s parents or other responsible adults of the State’s action.

Audit Results

Of the 330 EA claims sampled, only 32 claims were properly supported by EA applications signed by parents or guardians. There were also 57 claims for dependent children who may have been abused or neglected. In these cases we accepted an authorized representative signature in place of a parents signature. The 241 claims not supported by an application signed by a parent or guardian totaled \$552,254 for which DPW was reimbursed FFP of \$276,127. We are questioning the entire amount of the FFP.

Of the 241 claims that we are questioning:

- ☛ 15 applications were missing,
- ☛ 15 contained no signature whatsoever, and
- ☛ 211 were signed by a DHS or Family Court representative and not a parent or guardian.

We are questioning all 241 claims. The fact that 15 claims were not supported by an application is a clear violation of Federal criteria which requires that eligibility be based on the application. We believe lack of a parent or guardian signature on an application form prepared by a DHS or Family Court representative is an equally clear violation.

The State plan provides that the application generally must be filed by an adult member of the family. The only exception to that requirement is if both parents are absent or unwilling to apply on behalf of children who meet all other eligibility conditions. In such a case another adult relative or the county agency acting on behalf of children may file the application. We believe the exception dealing with a parent's unwillingness to apply for EA is contrary to Federal criteria which require demonstration of the applicant's intent to apply or in the case of children the intent of the parent or guardian. Unless the parent or guardian is incompetent or incapacitated, the parent's or guardian's unwillingness to apply should end the matter, and neither DHS nor Family Court should be allowed to apply for services contrary to the stated wishes of the parent or guardian.

We found, however, little evidence that attempts were made to contact the parent or guardians to obtain approval and signature on the applications. Of the 283 applications that were not signed by a parent or guardian, only 1 contained any indication that a parent or guardian was contacted. In that one case, the parent refused to sign the application. A Family Court representative noted on the EA application that the parent declined to apply for assistance by refusing to sign the application. The representative then signed the EA application on January 24, 1995. Another Family Court representative backdated the authorization date to June 13, 1994, when the child was arrested for aggravated assault, a date that preceded the application form print date of August 1994. The DHS claimed FFP for this child from June 13, 1994 to December 31, 1995, even though the parents declined to apply for the EA assistance.

In not a single case did we find any indication that either DHS or Family Court determined that the parent or guardian was incompetent or incapacitated. Nor were we provided any evidence that the children were in need of the immediate intervention of DHS or Family Court staff because of abuse or neglect. Many of these children, in fact, were already incarcerated or in a residential setting at the time the applications were prepared. Nevertheless, we accepted DHS or Family Court representatives applying for EA for 57 claims for dependent children. These 57 claims for counseling, foster care and related services may have resulted from abuse or neglect. For the delinquent children, the crimes committed were the reason why the juvenile justice services were provided. It is clear that parents or children are required to apply for EA when the claimed emergency results from the child's delinquent behavior and not as the result of parental neglect or abuse.

The DHS representatives who prepared many of the applications that we reviewed stated they rarely saw or talked to families. The DHS representatives only prepared applications based on bills and other information received from intake workers or providers and said that no local

procedure existed to make EA applicants aware that EA services were requested or authorized. Family Court officials stated that they did not prepare applications for the 30 children in our sample who resided in State-run institutions, such as forestry camps. The Family Court officials stated that since DPW told the Family Court to claim the children (a total of 248 in Philadelphia County) under the EA program, DPW must have prepared the applications. A DPW official told us that DPW did not have the applications. We noted that there were 21 applications for the 30 children in our sample of supplemental claims, but the applications were prepared as a result of other unrelated services, including prior stays at the YSC.

Allowing the DHS and Family Court representatives to prepare applications without input from parents contributed to several other type of violations noted in our review. We found that of the 241 claims in our sample without properly signed applications, 138 contained other violations as well. For instance, 17 claims were for services provided outside the 12 month authorization period, and 33 claims were supported by applications or authorizations that were backdated; clear indications that DPW was more concerned about submitting claims for FFP than in adhering to Federal criteria. In total, the 241 claims contained 172 other violations.

DPW Response

The DPW replied that, as noted the OIG report, ACF's position is that the Federal regulation at 45 CFR 206.10 applies to EA. However, OIG has refused to apply that portion of the regulation which expressly states that an application may be filed by "an authorized representative" or "where the applicant is incompetent or incapacitated, someone acting responsibly for him", 45 C.F.R. §206.10(a)(1)(ii). This language plainly includes a social service agency acting on behalf of a minor child.

The DPW believed that certain ACF staff have recently adopted the position that an application for EA must be filed by the family, not the State. However, the position urged by ACF staff is a new one, and was never formally communicated to the States. In the early 1990s, ACF expressly approved a procedure by which the Connecticut Commissioner of the Department of Children and Families could apply on behalf of each foster child by sending a request for EA in the form of a memo. In North Carolina Department of Human Services, DAB 1631 (1997), the HHS Departmental Appeals Board noted that ACF agreed that the EA "application may be submitted by the child's parent or a responsible adult or by a social service agency acting on behalf of the child."

The right of a social service agency to sign an application for a child in the custody of the county is also confirmed in prior Departmental Appeals Board decisions. Thus, for example, in Louisiana Department of Health and Human Services, DAB No. 989 (1988), the Appeals Board interpreted the companion Medicaid regulation to §206.10 and stated that "it would be unreasonable to expect a very young child to sign the form, and the caseworker, representing the State, is a likely person to verify the information on the form. Neither the regulation (42 C.F.R.

§435.907) nor the State plan mandate that the child or parent must sign, and there apparently is no bar to the caseworker being the sole signatory."

Parental signature requirements only make sense in the context of a child who is living in a family situation. When a child is taken into custody, the local agency acts in loco parentis and does everything the parent would do, including making application for government benefits. The OIG audit criterion of a parent signature on the EA application is not only contrary to the plain language of the regulation and ACF's prior interpretations, it also is nonsensical. The interpretation advances no sound public policy in the context of children who have been removed from the home setting.

OIG Comment

The 45 CFR 206.10(a)(1)(ii) states that the Agency "shall require a written application, signed under penalty of perjury, on a form prescribed by the State agency, from the applicant himself, or his authorized representative, or, where the applicant is incompetent or incapacitate, someone acting responsibly for him."

There was no evidence to show that for 240 of the 241 EA cases that we questioned, the applicants even knew that EA was being applied for on their behalf. The one applicant who knew, in fact, refused to apply for EA. The 45 CFR 234.120 and Action Transmittal SSA-AT-78-44 states that eligibility must be based on an application which also indicates the applicant's personal intent to apply for assistance. The DPW also failed to comply with 45 CFR 206.10(a)(4) which states that "Adequate notice shall be sent to applicants and recipients to indicate that assistance has been authorized (including the amount of financial assistance) or that it has been denied or terminated. Under this requirement, adequate notice means a written notice that contains a statement of the action taken, and the reasons for and specific regulations supporting such action, and an explanation of the individual's right to request a hearing."

The DPW stated that ACF expressly approved a procedure by which the Connecticut Commissioner of the Department of Children and Families could apply on behalf of each foster child by sending a request for EA in the form of a memo. The OIG accepted sampled cases where authorized representatives applied for children in foster care. In the cases disallowed by the OIG for lack of a signed application by the applicant, parent or guardian, there were no reports of child abuse or neglect included in the Emergency Assistance case files. As mentioned previously, we requested that Child Line match the children in our sample to their database of reported abuse and neglect cases. The Child Line did not provide us with any information that showed that anyone reported any of the children as being abused or neglected. If DPW could have provided us with conclusive evidence that Emergency Assistance was needed because the children were removed from the home due to abuse or neglect, we would have accepted a caseworker's signature.

Application/Authorization Was Backdated

For at least 65 claims in our statistical sample of 330 claims, either the application for EA services or the authorization of EA services was backdated. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$19,784,870 in FFP for claims where backdating occurred. We also suspect an additional 28 claims in our sample were also backdated, but we did not include these 28 claims in this individual estimate. Aside from this violation, 55 of the 65 claims violated at least 1 other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
C&Y	100	35	35.0%
YSC	100	0	0.0%
Family Court	100	27	27.0%
Supplemental	30	3	10.0%
Totals	330	65	

Federal Criteria

As mentioned previously in this report, an applicant must request EA before a valid claim can be filed. Timing of the application and the authorization of services is critical for FFP reimbursement. FFP is generally not authorized prior to the receipt of an application or before an application is authorized. Backdating an application or an authorization, therefore, has the effect of making ineligible services appear eligible for FFP.

According to 45 CFR 234.120, FFP is available in assistance payments made under a State plan under titles I, IV-A, X, XIV, or XVI of the Social Security Act to any family or individual for periods beginning with the month in which they meet all eligibility conditions under the plan and for which an application has been received by the agency.

In addition, the 45 CFR 206.10(a)(1)(ii) states the Agency “shall require a written application, signed under penalty of perjury”. Part IV-5214 of the Handbook of Public Assistance Administration states that all disbursements of assistance payments must be supported by a prior or simultaneous authorization of award. And, House Committee Report Number 544, 90th Congress, 1st Session 109 (1967) states that “the payment of services must be necessary in order to meet an immediate need that would not otherwise be met.” Thus, if a child is already receiving the needed services, no need would exist for an additional EA payment for the same services.

Audit Results

Of the 330 claims sampled, at least 65 had either the associated applications or authorizations backdated. Generally the backdating resulted in DPW claiming FFP as of the effective date of the State plan amendment or the date that the child received services (if after the effective date of the State plan amendment). The 65 claims totaled \$120,590 for which DPW was reimbursed FFP of \$60,295. We are questioning \$48,785 of this FFP. We noted that the application forms used by DPW did not require the preparer or authorizer to sign "under penalty of perjury" that the information on the application form was accurate.

Thirty-five claims were supported by applications that were clearly backdated. The claims totaled \$61,109 for which DPW was reimbursed FFP of \$30,554. We are questioning all of the FFP because there was no way to tell when the application was actually prepared. Thirty-one of the applications had authorizations that were not dated, and four of the applications had authorizations that were also backdated.

The application form used for the 35 C&Y claims contained the printed notation "EASA:12/94" which was the date the form was first authorized for use as an application and authorization form. The DHS representatives who signed the 35 applications dated their signatures prior to December 1994.

The backdating (date of the signature compared to the printed date of the form) ranged from a low of 118 days to a high of 4,699 days for an average of 996 days, or about 2.7 years. For example, one claim was for a child who was committed to an institution on August 27, 1982. An EA application, prepared and signed by a DHS representative, was dated March 14, 1983, or more than 10 years prior to the date that the application form was first authorized for use (December 1994). By backdating this claim, DHS was able to claim FFP for this child as of April 1, 1994, the date the State plan amendment became effective. The DHS representative who signed this application was also responsible for signing nine other applications that we consider to be backdated.

Staff responsible for preparing the C&Y applications told us that when they could not find EA applications selected by OIG for review they would "reconstruct" the application, that is, prepare them using information from the child's case files. They often used applications for medical assistance or Title IV-E foster care as their basis to prepare EA applications. They indicated that this practice of reconstructing EA applications was also commonly used in the past. It is not clear as to how many of the C&Y applications were "reconstructed" and backdated during our audit and how many were backdated prior to our review.

Thirty claims were supported by authorizations that were clearly backdated. The claims totaled \$59,482 for which DPW was reimbursed FFP of \$29,741. We are questioning FFP of \$18,230 which represents FFP reimbursed for services rendered from the date of the backdated authorization until the date of the application.

We determined that authorizations for 25 claims (23 P&TS claims and 2 supplemental claims) were backdated by a single representative of the Family Court. This individual signed the authorizations for services prior to the dates that the applications were signed and also prior to the date the use of the application forms was first authorized. The applications were signed, for the most part, in a span of a few days in January 1995. The services were authorized, again for the most part, in April 1994, the month in which the State plan amendment which expanded the EA program became effective. Claims for FFP were based on the dates of the backdated authorizations. The representative who authorized the EA services for the 25 claims could not remember why he backdated the authorizations, but agreed that the authorized dates were obviously backdated.

The other five claims (four P&TS claims and one supplemental claim) were backdated by five different Family Court representatives. The signed authorization dates were after the printed date on the form but prior to the signed application.

Twenty-eight claims were supported by applications that we suspect were backdated. Because of the lack of a printed date on the application form, we cannot be absolutely certain that the applications were backdated. Therefore, we are not questioning these claims. Nevertheless, we found certain indications that the applications were indeed backdated. For example,

- all 28 applications were signed before DHS and the Family Court were initially contacted on July 19, 1994 by DPW for training relative to the requirements for claiming EA, and before the training was conducted in August 1994, and
- 15 of the 28 applications were signed prior to the date that the State plan amendment became effective; 2 were allegedly signed more than 4 years before the effective date. Unlike the 35 claims mentioned above, there was no printed date on the bottom of the application forms for the 28 claims.

We believe the backdating may have been caused by a DPW instruction which called for DHS to claim FFP back to the date that the State plan amendment became effective. In a letter dated August 10, 1994 from the DPW's Deputy Secretary for Children, Youth and Families to the Commissioner of DHS, the Deputy Secretary stated that it was critical that DHS conduct training so that staff could begin using the EA Intake/Authorization form as soon as possible. The Deputy Secretary referred to a meeting on July 19, 1994 which was intended to enable DHS to begin this training process in advance of the statewide training which began on August 1, 1994. In the letter, the Deputy Secretary stated that:

“Counties will also be expected to convert cases that were active on April 1, 1994 to EA so that EA funds can be claimed back to the effective date of the State Plan Amendment.”

We question how this instruction, to enable claiming FFP back to the effective date of the State plan amendment, could be accomplished without the backdating of applications and authorizations. Applications for 60 of the 65 claims were prepared by DHS or Family Court representatives without input from the parents and thus could be easily backdated.

We found that 55 of the 65 claims violated other provisions of the Federal criteria. For example, 24 of the claims were for services that continued beyond 12 consecutive months. In total, the 65 claims contained 71 other violations.

DPW Response

The DPW agreed that the dates on a substantial number of EA service eligibility forms in the OIG sample of cases were backdated and stated that most of the backdating resulted from the fact that Philadelphia recreated EA service eligibility forms which had been inadvertently destroyed. As noted in the audit, the backdating is obvious from the fact that the dates filled on the form predate the print date for the form. The DPW does not believe that the backdating is an error so long as the information contained on the form accurately reflects what was done at the time.

Also, the DPW asserted that some of the backdating resulted from understandable caseworker confusion in implementing a Federal policy. In a memorandum to all Title IV-A State Directors dated February 14, 1994, ACF advised States that "a report of suspected abuse from a reliable source could constitute an application for EA." This policy was subsequently expanded to include reports of neglect as well as abuse. Procedures for implementing this Federal policy were never provided by ACF. Accordingly, caseworkers were understandably confused about the proper dates to be inserted on the EA service eligibility form and it appears they often backdated EA forms to reflect reports of abuse or neglect in their files.

The DPW agreed that the EA service eligibility form could have been more clearly designed and the instructions for filling it out could have been more clear. However, DPW believes that the Federal policy was confusing, and based on that Federal policy, the backdating of the dates on the service eligibility form was not an error.

OIG Comment

The backdating was not done by caseworkers but by Financial Managers who rarely, if ever, saw or talked to the children and parents for whom they were requesting assistance. The 45 CFR 206.10(a)(1)(ii) states that "the agency shall require a written application, signed under penalty of perjury". The 45 CFR 234.120 indicates that assistance payments are not available until the period beginning with the month in which the family or individual meets all eligibility conditions under the plan and for which an application has been received by the agency.

In the cases disallowed by OIG for having backdated applications, there were no reports of child abuse or neglect included in the Emergency Assistance case files or attached to the EA forms that were backdated.

Some of the backdating in Philadelphia may have resulted from a March 24, 1995 letter sent to all Chief Juvenile Probation Officers concerning the "Implementation of the Title IV-A/EA Program." The letter from the Executive Director directed probation officers to:

"Complete EA application forms (see Appendix C in draft policies and procedures) for every juvenile referred to the juvenile probation department."

"These forms must also be completed, retroactively, for all juveniles who received services since April 1, 1994. (The service authorization date and the juvenile probation signature date should be April 1, 1994 for all cases referred for probation services prior to April 1, 1994 and who were receiving services on April 1, 1994.)"

As a result, the individuals responsible for the backdating may have been following instructions promulgated by State officials.

Improper Authorization

Thirty-four claims in our statistical sample of 330 claims were never authorized for EA program participation or were authorized beyond the 12-month service window allowed by Federal criteria. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$4,630,948 in FFP for these claims. Aside from this violation, 33 of the 34 claims violated at least 1 other provision of the Federal criteria.

Sample Size	Sample Population	# of Claims with Violation	Error %
1327	100	5	5.0%
780	100	1	1.0%
Family Care	100	13	13.0%
Supplemental	30	10	33.3%
Totals	330	33	10.0%

Federal Criteria

The period in which EA can be furnished to a recipient is not open ended. The 45 CFR 233.120(b)(3) states that Federal matching is available only for emergency assistance which the State authorizes during 1 period of 30 consecutive days in any 12 consecutive months. That does not mean that the services are limited to 30 days but rather that they must be authorized within a 30-day period and that the services could be rendered over a 12-month window. If an emergency extends beyond the 12-month service window, EA could continue only if it was re-authorized at the 12-month point.

Part IV-5214 of the Handbook of Public Assistance Administration states that all disbursements of assistance payments must be supported by a prior (or simultaneous) authorization of award. The Pennsylvania State plan recognizes the need for authorizations within a 30-day time frame.

Audit Results

Of the 330 claims sampled, 34 were not supported by applications that were properly authorized by DHS or Family Court representatives. The 34 claims totaled \$60,344 for which DPW was reimbursed FFP of \$30,172. We are questioning the entire FFP.

Fourteen claims totaling \$14,213 in FFP were supported by applications prepared by DHS or Family Court representatives. These applications, however, were never authorized for the EA program.

Four claims totaling \$4,372 in FFP were supported by applications for which the authorizations were completed more than 12 months after the date of the applications. This was contrary not only to Federal criteria which stipulated a 12-month service window but also to the State plan.

We found that 33 of the 34 claims violated other provisions of the Federal criteria. In total, the 34 claims contained 50 other violations.

DPW Response

The DPW agreed that occasions of prolonged delay in authorizing EA are troubling. However, DPW believed the Federal regulation at 206.10(a)(3) prohibited the State from denying children assistance based solely upon the (State) agency's delay in authorization. Accordingly, the State's payment of these claims was not in error.

OIG Comment

The DPW cites CFR 206.10(a)(3) which states that a decision shall be made promptly on applications, pursuant to reasonable State-established time standards not in excess of 45 days for AFDC. This section states that the time standards apply except in unusual circumstances (e.g., where the agency cannot reach a decision because of failure or delay on the part of the applicant or an examining physician, or because of some administrative or other emergency that could not be controlled by the agency), in which instances the case record shows the cause of the delay. The DPW did not document reasons for delays, nor did DPW document the reason why applications were not authorized.

Service Provided Outside the 12-Month Service Window

There were 51 claims in our statistical sample of 330 claims that were for services provided outside the authorized 12-month service window. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$23,822,257 in FFP for services provided outside the 12-month period. Aside from this violation, 43 of these claims violated at least 1 other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
O&Y	100	42	42.0%
YSC	100	8	8.0%
Family Court	100	1	1.0%
Supplemental	30	0	0.0%
Totals	330	51	

Federal Criteria

Timing of the application and the authorization for services is critical to FFP reimbursement. According to 45 CFR 234.120, FFP is available in assistance payments made under a State plan under Titles I, IV-A, X, XIV, or XVI of the Social Security Act to any family or individual for periods beginning with the month in which they meet all eligibility conditions under the plan and in which an application has been received by the agency. In addition, the 45 CFR 206.10(a)(1)(ii) states the Agency “shall require a written application, signed under penalty of perjury”. Part IV-5214 of the Handbook of Public Assistance Administration states that all disbursements of assistance payments must be supported by a prior or simultaneous authorization of award. And, House Committee Report Number 544, 90th Congress, 1st Session 109 (1967) states that “the payment of services must be necessary in order to meet an immediate need that would not otherwise be met.”

Under the EA program, services could be provided up to 12 consecutive months from the date of the EA application authorization. Claims made for services provided beyond this 12 month service window without the benefit of a new authorization, were not allowable. Pertinent criteria follows.

- Section 406(e)(1) of the Social Security Act stated that EA can be “furnished for a period not in excess of 30 days in any 12-month period”.
- The 45 CFR 233.120(b)(3) states Federal matching is available only for emergency assistance which the State authorizes during 1 period of 30 consecutive days in any 12 consecutive months.

According to an ACF official, ACF’s practice was that EA services could be authorized and provided for a period not to exceed 12 consecutive months. A new authorization was required to continue EA services beyond the original 12-month window. The Pennsylvania State plan stated

that the EA services were to be provided until the emergency condition was alleviated. We believe that this provision in the State plan must be taken in conjunction with the Federal criteria and ACF practice which was to allow the services to be continued within the 12-month window and beyond only if there was a re-authorization.

Audit Results

Of the 330 claims sampled, 51 were for services that were outside the 12-month authorized service window. The 51 claims totaled \$104,639 for which DPW was reimbursed FFP of \$52,319. We are questioning FFP of \$47,182 (the difference represents FFP for services provided during the 12-month service window).

We found 11 claims where the reported emergency on which the claim was based had ceased and services halted before the application was even prepared. In these cases the EA application and authorization were prepared more than 12 months after the services were provided. For example, a child was arrested for possession of a weapon on school property and placed in the YSC from November 15, 1995 to November 16, 1995. Not until February 5, 1998, almost 2 years and 3 months after the child was released from the YSC, did a DHS representative prepare an EA application. On February 16, 1998, the EA application was authorized for the YSC service that ended with the child's release on November 16, 1995, a clear violation of congressional intent as indicated in the House Committee Report cited above.

Services were provided up to 985 days prior to the dates of the applications for the 11 claims, or an average of 578 days. It appears likely that the motive behind claiming for services provided prior to the date of the application was to maximize FFP by claiming for services as far back as possible to the effective date of the State plan amendment. The amendment to the State plan effective April 1, 1994, allowed many more types of services than were previously allowable for FFP reimbursement under the EA program. The DHS officials were apparently slow to realize that they could claim YSC detention as an emergency with the result that the first YSC claim for EA was submitted in April 1995, 1 year after the effective date of the amendment. The DHS, therefore, prepared EA applications for children who were or had been receiving types of service that qualified for EA under the new State plan. Because many of the children were already receiving benefits, Philadelphia authorized EA services back to the date benefits began, and well in advance of the actual date applications were prepared.

*Forty DHS claims*³ were for services provided beyond the 12-month service window. The 40 claims totaled \$88,402 for which DPW was reimbursed FFP of \$44,201. We are questioning

³ The Family Court also submitted claims for services provided beyond the 12-month service window, but we did not include these claims in our statistical sample. Because of the computer system used by Family Court, we were able to identify 100 percent of these claims, making a sample unnecessary.

FFP of \$39,064 (the difference represents FFP for services provided during the 12-month service window).

In determining if the claims were for services provided within the 12-month service window, we obtained the dates of services for all claims in our sample and compared that to the dates of the EA applications. On average, applications for the 40 claims preceded the dates of service by 1,338 days or 973 days beyond the 12-month service window. Only 7 of the 40 claims had services provided within the 12-month service window. Services provided under the remaining 33 claims were all outside the 12-month service window; services for 16 of these claims continued to be provided from 2 to more than 4 years beyond the 12-month window.

Much of this was due to the widespread practice of backdating applications and the practice of continuing claims for children in institutions or foster homes for as long as they remained in those settings, without any regard for the 12-month service window. For example, DHS had prepared, signed and backdated the application for one child to June 30, 1988, long before the State plan amendment expanded the EA program. The date of service for the claim in our sample was January 1, 1995 to March 31, 1995. We noted that the child was institutionalized continuously from November 5, 1993 through the end date of the claim.

We found that 43 of the 51 claims violated other provisions of the Federal criteria. For example, applications for 17 claims did not contain the proper signatures, and 12 of the claims supplemented the Title IV-E Foster Care program. We also noted that at least 24 and as many as 32 claims had applications or authorizations backdated. In total, the 51 claims contained 64 other violations.

DPW Response

The DPW stated that the audit claims that Federal law limited the State to a 12-month authorization period and the audit cites an anonymous ACF employee for this interpretation. However, ACF's formal policy was that there was no arbitrary limitation on the length of an emergency. In a memorandum dated January 5, 1993, the Director of the Office of Family Assistance stated that none of the official policy statements previously issued by ACF "establishes a specific time standard for determining when a particular type of assistance may no longer be viewed as addressing an emergency. Accordingly, a Federal determination that a proposed time limit for providing EA is too long would have to be based on a finding that the proposed duration of assistance is longer than necessary to respond to the emergency."

The DPW asserted that the OIG is well aware that ACF has approved EA service authorization periods in excess of 1 year. In its 1995 audit report entitled, "Review of Rising Costs in the Emergency Assistance Program," OIG noted that 1 state had been permitted to increase its eligibility period "from 6 months to as long as the emergency exists." Pennsylvania is a second State that was permitted such an expansion. Pennsylvania's approved State plan states in

highlighted underlined language that services will be provided until the emergency condition is alleviated.

Pennsylvania's approved State plan language expressly permits service authorization periods in excess of 1 year. Consistent with its view that no arbitrary limitation could be imposed upon authorization periods, ACF approved that language. It is both unfair and unlawful for OIG to retroactively impose an arbitrary 12 month limit in its audit criteria.

OIG Comment

Emergency Assistance authorizations are valid for only a 12-month period. The purpose of the EA program was to provide temporary financial assistance and supportive services to eligible families experiencing an emergency. Section 406(e)(1) of the Social Security Act states that EA can be “furnished for a period not in excess of 30 days in any 12-month period”. The 45 CFR 233.120(b)(3) states Federal matching is available during one period of 30 consecutive days in any 12 consecutive months. The ACF officials confirmed that the criteria we were using was in effect and valid when the claims were filed.

The State agency claimed FFP under the EA program for services provided to clients more than 12 months after the date of the clients’ application. For example, the State agency claimed FFP for probation services for 4,643 children who were in probation for more than a year. Some of the claims that the OIG disallowed were for detention or foster care that lasted for many years.

The Social Security Act Section 406(e)1 allows EA services to be furnished for a period not in excess of 30 days in any 12-month period. The 45 CFR 233.120(b)(3) likewise required that EA services be authorized in a 30-day period. The ACF in promulgating the Act and the CFR actually liberalized the EA service period to 12 months in which all EA services could be provided, as long as the services were authorized in a 30-day period. If any need for EA occurs after the 30-day period, the applicant must wait a minimum of 12 months from the date of the last EA application submission before submitting another EA application. The OIG accepted ACF’s liberalized rules when determining if a claim for services was incurred within the emergency period.

Pennsylvania’s approved State Plan language follows the regulation closely on this issue. The plan reads as follows: “services will be provided until the emergency condition is alleviated and must be authorized during a single 30-day period no less than 12 months after the beginning of the family’s last EA authorization period.”

Unrelated Claim Within 12-Month Service Window

Fifty-four claims in our statistical sample of 330 claims were for children with a prior unrelated EA claim during the same 12-month service window. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$9,048,238 in FFP for claims for these children. Aside from this violation, 51 of the 54 claims violated at least 1 other provision of the Federal criteria.

Sample State	Sample Population	# of Claims with Violation	Error %
C&Y	100	7	7.0%
YSC	100	45	45.0%
Family Court	100	1	1.0%
Supplemental	30	1	3.3%
Totals	330	54	

Federal Criteria

The 45 CFR 233.120(b)(3) states that Federal matching is available only for emergency assistance which the State authorizes during one period of 30 consecutive days in any 12 consecutive months. Part IV-5214 of the Handbook of Public Assistance Administration states all disbursements of assistance payments must be supported by a prior or simultaneous authorization of award.

The ACF provided additional clarification of the criteria as follows:

- States must properly authorize emergency assistance. There can be only one 30-day authorization period for EA services in a 12-month period. One or more authorization actions related to the emergency can occur within this period.
- Additional EA services within the 12-month period that were not authorized during the original 30-day authorization period are not eligible for Federal reimbursement. This is because these additional services constitute a second emergency within the 12-month period.

The DPW State plan recognized that a second emergency within 12 consecutive months of a prior unrelated emergency was not eligible for EA services. In a Children, Youth and Families Bulletin dated April 21, 1995, DPW stated that verification of the 12-month minimum requirement for service authorization would be done through use of the PEAPS. When matches occur, there must be a review made to determine if the current situation is a continuation of the initial emergency or if it is a new emergency for the child. New emergencies would not be eligible for EA services.

Audit Results

Of the 330 claims sampled, 54 were for children with a prior unrelated EA claim during the same 12-month service window. In our opinion, these claims represent second emergencies and are not eligible for FFP under the EA program. The 54 claims total \$160,660 for which DPW was reimbursed FFP of \$80,330. We are questioning all of the FFP.

There were 23 claims for which we were provided copies of prior applications for separate emergencies unrelated to the emergency involved in our sample claim. These other applications were prepared within the same 12-month service window as were our sample claims. For example, a YSC claim in our sample was for a child's 7-day stay in a detention center from July 1, 1994 to July 7, 1994. The child was arrested for known possession of a controlled substance. The EA application for this incident was retroactively prepared by DHS and dated October 14, 1994 and authorized on January 10, 1995. We determined, however, that there was one other application for services authorized by a Family Court representative on April 1, 1994, well within the 12-month service window established by Federal criteria. Since there were two authorizations within the 12-month service window, we concluded that there were two separate emergencies, and that the second emergency--our sample claim--was ineligible.

There were 31 claims for which we were not provided copies of prior applications. We know, however, that other EA services were provided to the children for whom the 31 claims were submitted. The other EA services were provided:

- ▶ prior to the dates of the applications for the 31 claims in our sample; and
- ▶ within the same 12-month service window as the 31 claims in our sample.

In our opinion, these other EA services were unrelated to the claims that we sampled as evidenced by either separate arrests, unrelated services, or breaks in stay, and separate applications for the 31 claims in our sample. For example, a YSC claim in our sample was for a child's 5-day stay in a detention center from January 27, 1995 to January 31, 1995. The child was arrested for aggravated assault, robbery and criminal conspiracy. The EA application for this incident was prepared by DHS on January 27, 1995 and authorized the same day. Although we were not provided another EA application, we noted that this child was claimed on EA Quarterly Summary Invoice for foster family care from September 19, 1994 to December 31, 1994, the month prior to the incident covered by our claim. Foster care services and detention services are not related.

Based on DPW's instruction, the 54 claims should have been identified as "matches" in PEAPS and reviewed manually to determine if they were second emergencies. We found no indication that any of the claims were so identified probably because DHS did not make full use of PEAPS, and 52 of the 54 claims questioned were DHS claims.

We found that 51 of these 54 claims violated other provisions of the Federal criteria. We noted applications for 50 of the claims did not contain the proper signatures, and 5 of the claims were for services provided outside the 12-month authorization period. In total, the 51 claims contained 63 other violations.

DPW Response

The DPW believed that Pennsylvania's approved State plan provided for a single authorization of a continuum of EA services and that this approach was expressly approved by ACF. In a policy clarification dated August 24, 1994, the Director of the Office of Family Assistance specifically advised that New Jersey's provision of juvenile detention care or foster care following failed preventive family preservation services did not violate the single authorization requirement of Federal law. The Director noted that "the precedent for this type of authorization is the current practice of many States in authorization EA for very general family preservation and reunification services."

The DPW also stated that OIG misapplied Federal policy by ignoring the continuum of services concept. OIG appears to have erroneously treated each new service, each break in service, and each new arrest as ending, the prior authorization period.

OIG Comment

In addition to the Federal criteria cited in the report, we found that the DPW State plan recognized that a second emergency within 12 consecutive months of a prior unrelated emergency was not eligible for EA services. In a Children, Youth and Families Bulletin dated April 21, 1995, DPW stated that verification of the 12-month minimum requirement for service authorization would be done through use of the PEAPS. When matches occur, there must be a review made to determine if the current situation is a continuation of the initial emergency or if it is a new emergency for the child. New emergencies would not be eligible for EA services.

We allowed all services related to a single emergency within a 12-month period. Such services could include: a claim for an arrest, placement in a detention facility, and subsequent probation. However we disallowed claims for a second emergency within a 12-month period. Emergencies we questioned were the result of new emergencies occurring after the 30-day authorization window. Twenty-three of the cases we cited had more than one EA application prepared by county officials. This is a clear sign that the county official believed that the emergencies were not related.

EA Supplemented Another Federal Program

Twenty-three claims in our statistical sample of 330 claims were for children enrolled in the Title IV-E Foster Care program. The claims were for foster care-related costs over and above the amount reimbursed under the Title IV-E program. These costs are unallowable under the EA program. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$3,278,055 in FFP for claims associated with children enrolled in the Title IV-E Foster Care program. Aside from this violation, 18 of these claims violated at least 1 other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
CCY	100	23	23.0%
YSC	100	0	0.0%
Family Care	100	0	0.0%
Supplemental	10	0	0.0%
Total	330	23	

Federal Criteria

Both the Social Security Act and the State plan preclude payment for the costs of foster care that exceed the funds reimbursed under Title IV-E. The Social Security Act, Section 472 authorizes foster care maintenance payments “with respect to a child who would meet the requirements of §406(a) or of §407 but for his removal from the home of a relative (specified in §406(a)),” so long as four criteria are met. Section 409 of the Social Security Act states, “a child with respect to whom foster care maintenance payments or adoption assistance payments are made under part E or under State or local law shall not, for the period for which such payments are made, be regarded as a member of a family for purposes of determining the amount of benefits of the family under this part”, that is, Title IV-A. Therefore, a child cannot be eligible for Title IV-A and Title IV-E at the same time (they are mutually exclusive).

The Pennsylvania State plan which authorizes shelter care and foster family care under the EA program was in accordance with this exclusion as it specifically excluded EA if a child had assistance provided under Title IV-E.

The Office of Management and Budget Circular A-87, Cost Principles for State, Local and Indian Tribal Governments also applies. Section (C)(3)(c) states that “any cost applicable to a particular grant or cost objective under the principles provided in this Circular may not be shifted to other Federal grant programs to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons.”

Audit Results

Of the 330 claims in our sample, 23 were for children for whom DHS was also claiming FFP under the Title IV-E Foster Care program. The 23 claims totaled \$11,242 for which DPW was reimbursed FFP of \$5,621. We are questioning the entire \$5,621.

One example of Title IV-A funds used to supplement the Title IV-E program involved a child who received foster care services during the quarter ended September 30, 1994. The DHS claimed \$3,618.45 for the services provided to this child during that quarter. According to the claim, the child spent 43 days in foster care at \$84.15 per day, or \$3,618. The actual cost of the foster care, however, was shown as being \$4,020, or \$402 more than reimbursed under the Title IV-E Foster Care program. We reviewed the Title IV-A claim for the same quarter and found that DHS claimed for the same child the \$402 that was not reimbursed by Title IV-E. The DHS representatives indicated that they believed that the practice of shifting unreimbursed Title IV-E Foster Care costs to the Title IV-A EA program was allowable. It was not.

Eighteen of the 23 claims violated other provisions of the Federal criteria. For example, 12 of the claims were for services provided outside the 12-month service window, and 3 of the claims were for children not living with a specified relative during the 6 months prior to the application. In total, the 23 claims contained 32 other violations.

DPW Response

The DPW believed that ACF policy has long permitted the dual receipt of benefits under EA and other programs so long as there is no duplication of coverage. In a memorandum dated February 14, 1992 addressing this issue, the Director of the Office of Family Assistance advised that EA was not intended to duplicate assistance to meet the "identical needs" addressed by other public assistance programs.

The EA did not duplicate the "identical needs" of Title IV-E recipients. Accordingly, Pennsylvania was permitted to utilize EA to supplement benefits for Title IV-E eligible children.

OIG Comment

A child cannot be eligible for Title IV-A and Title IV-E at the same time; the programs are mutually exclusive. This is recognized in the Social Security Act and in the Pennsylvania State plan which authorizes shelter care and foster family care under its EA program. The state plan defines the services provided to meet emergency situations, which includes emergency protective services for children. The following statement excludes emergency assistance for children receiving IV-E assistance:

Emergency protective services for children [include] "Shelter care, foster family care, or residential group care (including juvenile detention services and secure residential

services at a private or public facility) for children separated from their parents, unless the child has such assistance under title IV-E.”

In addition, Transmittal Memorandum--SSA-AT-82-28 in effect since November 5, 1982 states that it is not permissible to authorize Emergency Assistance to supplement an inadequate public assistance grant. Our review showed that DPW was claiming in cases where the cost of foster care exceeds funds available under the Title IV-E program. In effect, Philadelphia shifted costs that exceeded maximum per diem rates under the Federal Foster Care program and declared them emergency assistance costs. This is not allowable.

Lack of Support for Claim

Fourteen claims in our statistical sample of 330 claims were not fully supported. We questioned four claims in total because we were not provided any support to show that the children for whom the claims were made existed or that the services were rendered. We partially questioned an additional 10 claims because services were not rendered during a portion of the time periods for which the claims were made or the vendor invoice was less than the claimed amount. Projecting these errors to the universe of claims, we estimate that DPW was reimbursed \$1,861,252 in FFP for services that may not have been provided. Aside from this violation, 12 of the 14 claims violated at least 1 other provision of the Federal criteria.

Sample State	Sample Population	# of Claims with Violation	Viol. %
DCY	100	1	1.0%
YSC	100	2	2.0%
Family Care	100	9	9.0%
Supplemental	30	0	0.0%
Totals	330	14	

Federal Criteria

The 45 CFR 206.10(a)(8) states “Each decision regarding eligibility or ineligibility will be supported by facts in the applicant’s or recipient’s case record.” The ACF provided specific guidance concerning EA claim costs which stated that costs not supported by documentation were unallowable. A policy information memorandum, dated February 8, 1973 issued by the previous Health, Education, and Welfare Department (Policy #21) prescribes adequate documented evidence of program costs as necessary to receive FFP. Fiscal records must support the expenditures. Agency records must identify separately each AFDC-EA case, just as required in all the federally aided programs, to facilitate State and Federal review.

Audit Results

Of the 330 claims sampled, 14 were not adequately supported. The 14 claims totaled \$40,180 for which DPW was reimbursed FFP of \$20,090. We are questioning FFP of \$10,429.

For our analysis, we requested evidence of vendor documentation to support the EA costs claimed by the DHS for FFP reimbursement. The C&Y claims were supported by a detailed Family & Children Tracking Sheet and vendor bills which listed the number of days, billing rate, and type of service a child received. The YSC claims were supported by a Resident Unit Record which identified the child's admission date, and a juvenile history file that listed the child's arrest dates and court dispositions. Family Court claims were also supported by a juvenile history file.

We questioned four claims in total. The FFP reimbursed for these claims totaled \$3,992. For one claim, DHS was unable to find a vendor invoice, and the placement history for the child on whose behalf the claim was made showed that no services were provided for the period claimed. The other three claims were Family Court claims for which the Family Court was unable to locate any juvenile history for the children on whose behalf the claims were made. A Family Court representative stated that this can happen if a child's name is misspelled or if a child uses a different name, but could provide no additional support for the three claims.

We partially questioned 10 claims. The FFP for these claims totaled \$12,874, of which we questioned \$6,437. Four of the bills were from DHS. The DHS provided bills to support two C&Y claims, but the bills were in amounts less than what was actually claimed. The other two DHS claims were YSC claims for children in the detention center. The placement history for the children did not support the number of days claimed (one of the children escaped).

Six of the partially questioned claims were from Family Court. The children on whose behalf the claims were made had ended probation services during the period claimed, but the PEAPS, which was used by Family Court to generate claims, was not updated to show that the services were halted. For example, Family Court claimed P&TS provided to a child from April 1, 1994 to December 31, 1995. However, the Family Court's juvenile history file showed that the child was discharged from probation on April 11, 1994.

We found that 12 of the 14 claims violated other provisions of the Federal criteria. For example, none of the applications for the 12 claims contained the proper signatures, and 5 of the claims had unrelated prior emergencies within the 12-month service window. In total, the 14 claims contained 19 other violations.

DPW Response

The DPW did not comment on this finding.

Claim For Delinquent Child After December 31, 1995

Four claims in our statistical sample of 330 claims were cases for which DHS misreported the period in which the costs were actually incurred. Claims for delinquent children were excluded from the EA program effective January 1, 1996. The four claims in our sample totaled \$28,534 in FFP. We determined that \$20,590 of that amount was for costs incurred after January 1, 1996 but included in the quarterly claim ended December 31, 1995. Had the costs been properly recorded, no FFP would have been reimbursed for these claims. Aside from this violation, the four claims violated at least one other provision of the Federal criteria.

Sample Strata	Sample Population	# of Claims with Violation	Error %
E&Y	100	0	0.0%
YSC	100	4	4.0%
Family Court	100	0	0.0%
Supplemental	30	0	0.0%
Totals	330	4	

Because of the small number of claims identified as misreported in our sample, we did not make an individual projection for this violation. We did, however, review the December 31, 1995 YSC Quarterly Summary Invoice in its entirety and identified 135 claims where DHS misreported the period in which the costs were incurred. As a result, DHS was reimbursed a total of \$487,510 more than allowed.

Federal Criteria

The ACF issued an Action Transmittal ACF-AT-95-9 dated September 12, 1995 stating that FFP was not available under EA for costs associated with providing benefits or services to children in the juvenile justice system who have been removed from the home as a result of the child's alleged, charged or adjudicated delinquent behavior. Pennsylvania, which had an approved State plan amendment that covered such children, was allowed to continue to claim FFP through December 31, 1995. Effective January 1, 1996, FFP was not available, and any claims for such costs were to be disallowed. The ACF's position on this issue was upheld in Departmental Appeal Board Decision No. 1631 (dated September 19, 1997).

Audit Results

Of the 330 claims sampled, 4 were for costs incurred after December 31, 1995 for delinquent children⁴. The four claims totaled \$57,068 for which DPW was reimbursed \$28,534 in FFP. We are questioning \$20,590. Although the costs were incurred in 1996, DHS included the costs on its December 31, 1995 YSC Quarterly Summary Invoice which was submitted to DPW in February 1996.

The four YSC claims involved delinquent children who were housed at the detention center during December 1995 and into 1996. Rather than limit the December 31, 1995 quarterly claim to costs that were incurred during that quarter, DHS included costs that were incurred in 1996--- costs that, if claimed on the March 31, 1996 Quarterly Summary Invoice, would have been disallowed. The DHS claimed costs of \$324.25 a day for 176 days, or a total of \$57,068 for these 4 children. We determined that 127 of these days were in 1996. Thus \$41,180 of the claim was for costs incurred in 1996. The FFP for the 1996 portion of the claims totaled \$20,590.

Since we found that DHS had misreported the costs associated with four children on the December 31, 1995 YSC Quarterly Summary Invoice, we conducted a review of all children who were included on that invoice. We identified 135 children who were in the detention center during December 1995 and into 1996. For these children DHS claimed costs for 6,169 days in detention. We determined that 3,007 of these days were for detention served in 1996 and should not have been included in the December 31, 1995 Quarterly Summary Invoice. At \$324.25 a day, DHS claimed \$975,020 for costs that were incurred in 1996. The FFP for these unallowable costs totaled \$487,510. Because these costs are included in the sample population, we are not questioning them separately.

During our audit period, we found only one other minor example (involving one claim) where DHS shifted costs between quarters. We can only conclude in the case of the 135 claims that DHS shifted costs between quarters for the sole reason of circumventing the ACF instruction that costs associated with delinquent children were to be disallowed as of January 1, 1996.

The 4 claims contained 7 other violations of Federal criteria, including none having an application signed by a parent or guardian.

DPW Response

The DPW did not comment on this finding.

⁴ Our previous report (A-03-98-00590) questioned delinquent costs claimed by DPW after January 1, 1996. The scope of that audit did not include a review of costs claimed on the December 31, 1995 YSC Quarterly Summary Invoice.

Duplicate Billing for Same Service

One YSC claim in our statistical sample of 330 claims represented a duplicate billing. The claim was for \$1,622 which represented the costs associated with 5 days of detention which were billed on the YSC Quarterly Summary Invoices for the quarters ended December 31, 1994 and March 31, 1995. The FFP for this duplicate claim was \$811. Aside from this violation, this claim violated two other provisions of the Federal criteria.

Federal Criteria

The OMB Circular A-87, (effective for costs incurred after September 1, 1995 or the beginning of the State's fiscal year) describes allowable billing practices. Similar language was contained in the earlier version of A-87 which covered costs incurred prior to September 1, 1995. Essentially a valid claim for EA can only be billed to the Federal Government once. Double billings for same service are not allowable, since the duplicate costs were not incurred.

Audit Results

Of the 330 claims sampled, 1 represented a duplicate charge to the EA program. Review of the YSC Quarterly Summary Invoice for the quarter ended December 31, 1994 showed that DHS claimed \$2,594 for services rendered to a child from December 29, 1994 through January 5, 1995. Our review of the YSC Quarterly Summary Invoice for the quarter ended March 31, 1995 showed that DHS claimed \$1,622 for the same child for the same services rendered from January 1, 1995 through January 5, 1995. This claim represented a duplicate claim for which FFP of \$811 was reimbursed. Since we only found one example of a duplicate claim in our sample, we believe this to be an inadvertent error.

The one claim also had two other violations dealing with the lack of a parent or guardian signature on the application, and an unrelated claim within the 12-month service window.

DPW Response

The DPW did not comment on this finding.

ADMINISTRATIVE COSTS

The Philadelphia DHS reported \$49,694,099 of costs from July 1, 1994 to June 30, 1996 under the EA program. The DPW was reimbursed \$24,847,050 in FFP. Based on the results of our computer analysis and our statistical sample, we estimate that at least \$19,345,913 of the

\$24,847,050 in FFP reimbursed to DPW for administrative claims in Philadelphia County were associated with the processing of unallowable claims. The combined results of our analysis and statistical sample showed that at least \$58,210,910 of the \$74,760,284 (77.86 percent) in direct claims for specific children violated Federal laws and regulations. The administrative costs associated with the direct claims that contained violations of Federal laws and regulations are not allowable.

DPW Response

The DPW did not comment on this finding.

CONCLUSIONS AND RECOMMENDATIONS

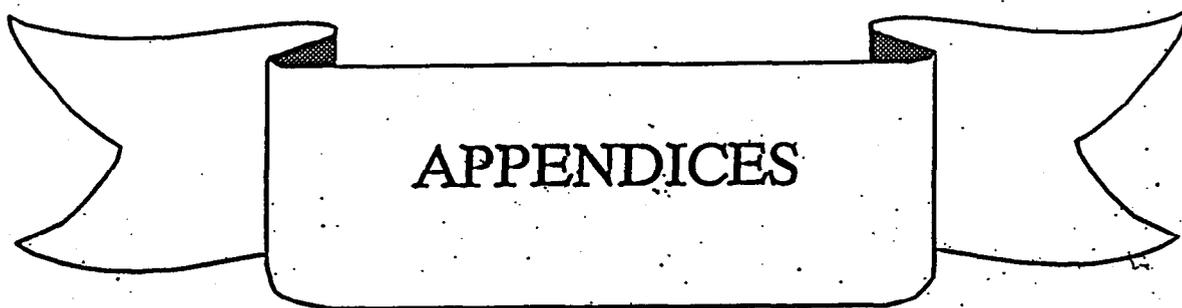
Widespread violations of Federal regulations by DPW and the Philadelphia DHS and Family Court occurred in FYs 1995 and 1996 with the result that about \$58.2 million of the \$74.8 million of FFP reimbursed to DPW during that period was for unallowable claims. The majority of the claims reviewed contained multiple violations of Federal criteria, ranging from children not living with a specified relative within 6 months of the application for EA, to parents or guardians being excluded from the application process, to widespread backdating of documents by DHS and Family Court personnel. An additional \$19.4 million in FFP was claimed for administrative costs to process the claims that violated Federal laws and regulations.

The EA program was eliminated by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 which created the TANF block grant. We are, therefore, not making any procedural recommendations. We recommend that DPW:

1. Refund to the Federal Government \$58,210,910 for FFP associated with unallowable EA claims invoiced by the Philadelphia DHS and Family Court in FYs 1995 and 1996.
2. Conduct a review using statistical sampling techniques of all quarterly claims submitted by Philadelphia DHS and Family Court (including Adjusting and Supplemental claims) totaling \$14,478,202 and reimbursed for FFP after October 1, 1996, and determine if the same conditions we noted in this report continued. Summarized results should be provided to ACF, and a refund to the Federal Government should be made for all costs inappropriately claimed.
3. Conduct a similar review of all other Pennsylvania counties except Allegheny County (the OIG intends to audit Allegheny County) to determine if EA claims for FFP were allowable. Summarized results should be provided to ACF, and a

refund to the Federal Government should be made for all costs inappropriately claimed.

4. Refund to the Federal Government \$19,345,913 for FFP claimed for FY 1995 and 1996 administrative costs allocated to the EA program for processing claims that violated Federal laws and regulations and review and adjust administrative costs for succeeding periods.



APPENDICES

SAMPLING METHODOLOGY

Review Objective:

The objective of our review was to determine if EA claims submitted for FFP by DPW for FY's 1995 and 1996 for cost incurred in Philadelphia County complied with Federal criteria.

Population:

The population of EA claims we statistically sampled totaled 79,289. These claims consisted of:

- 58,314 claims invoiced by the Philadelphia DHS Children and Youth Division;
- 8,336 claims by DHS Division of Juvenile Justice Services for Children detained at the Youth Study Center;
- 12,391 children (excludes the duplicate claim for 157 children) claimed by the First Judicial District of Pennsylvania Court of Common Pleas, Family Court Division for probation and truant services;
- 248 children claimed on a supplemental claim by the First Judicial District of Pennsylvania Court of Common Pleas, Family Court Division for probation and truant services.

We identified these claims based on quarterly claim rosters, the PEAPS database, and a supplemental adjustment list for children in State-operated institutions such as forestry camps. These EA claims were submitted for FFP for the period October 1, 1994 through September 30, 1996 and reimbursed by the Federal Government.

Sampling Frame:

In total we had a sample population of 79,289 EA claims totaling \$143.2 million (\$71.6 million Federal share).

- Eight quarterly C&Y alphabetical claims rosters from the Philadelphia DHS Family and Children Tracking System. These lists contained 58,314 claims valued at \$96.7 million (\$48.3 million FFP).

- Six alphabetical quarterly YSC rosters contained 8,336 claims valued at \$28.1 million (\$14.1 million FFP).
- The PEAPS database contained 12,391 children (we excluded the duplicate claims for 157 children) that received P&TS services. The claims totaled \$17.8 million (\$8.9 million FFP)
- The 248 children included on a supplemental claim valued at \$546,446 (\$273,223 FFP).

Sample Unit:

The sampling unit for the DHS claims (both C&Y and YSC claims) was an individual EA claim for a child and one type of service on a quarterly claim; the sampling unit for Family Court claims was an individual child claimed for all quarters.

Sample Design:

We utilized stratified variable random sampling techniques for eight quarterly C&Y claim rosters, six quarterly YSC claim rosters, Family Courts PEAPS data and a Supplemental claim adjustment list for children in State-operated institutions.

Sample Size:

We selected a sample of 330 claims for review, consisting of:

- 100 C&Y claims from eight quarterly rosters.
- 100 YSC claims from six quarterly rosters.
- 100 Family Court claims from PEAPS.
- 30 Family Court claims from the supplemental claim adjustment list.

Source of Random Numbers:

The random numbers for selecting the sample items were generated using an approved Department of Health and Human Services, Office of Inspector General, Office of Audit Services, statistical software package that has been validated using the National Bureau of Standards methodology. The numbers were generated for each of the four strata independently.

Method of Selecting Sample Items:

The sample claims contained in the eight C&Y quarterly rosters, six YSC quarterly rosters, and the supplemental claims adjustment list were numbered sequentially and independently. Sample claims for the Family Court were selected from children claimed through the PEAPS database after arranging the names alphabetically on a last name, first name basis.

Three sets of 100 random numbers and one set of 30 random numbers were drawn; the first 100 were for the eight C&Y rosters, the second 100 were for the 6 YSC rosters, the third 100 were for the Family Courts PEAPS database, and the 1 set of 30 were for the Family Court's supplemental claims adjustment list. The random numbers were correlated to the numbered sample items in each roster, database, or list.

SAMPLE PROJECTIONS

Results of Sample:

The results of our review of 330 sample claims are as follows:

Sample Results					
Stratum Number	Number of Claims in Universe	FFP Value of Universe	Sample Size	Number of Claims with Errors	FFP Value of Errors
1 (C&Y)	58,314	\$48,346,694	100	92	\$75,241
2 (YSC)	8,336	\$14,056,237	100	98	\$157,910
3 (Family Court / Probation/Truant)	12,391	\$8,924,593	100	83	\$59,627
4 (Family Court/ Supplemental)	248	\$273,223	30	28	\$30,940
Total	79,289	\$71,600,747	330	301	\$323,718

Variable Appraisal Projections:

- Number of claims with errors identified in the sample: 301
- Value of errors identified in the sample (FFP): \$323,718

- Point estimate unallowable FFP (Difference Estimator): \$64,683,457
- Upper limit unallowable FFP (90 percent confidence level): \$74,315,541
- Lower limit unallowable FFP (90 percent confidence level): \$55,051,373

Using statistically valid sampling techniques, we estimate with 95 percent confidence that at least \$55,051,373 of the \$71,600,747 claimed was unallowable for Federal reimbursement. Our point estimate was \$129,366,915 (\$64,683,457 Federal share) with a precision of plus or minus \$19,264,168 (\$9,632,084 Federal share).



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Mr. David M. Long
Regional Inspector General for Audit Services
Department of Health and Human Services
150 South Independence Mall West, Suite 316
Philadelphia, Pennsylvania 19106-3499

Re: Review of Costs Claimed for Federal Financial Participation under
the Title IV-A Emergency Assistance Program by the Pennsylvania
Department of Public Welfare for Children in Philadelphia County from
October 1, 1994 to September 30, 1996
CIN #A-03-98-00592

Dear Mr. Long:

I am writing to provide you with the comments of the Pennsylvania Department of Public Welfare on the above referenced draft audit. The Office of Inspector General (OIG) has declined to provide us with sufficient time to review source documentation in Philadelphia and thus we are unable to assess the individual sample errors alleged in your report. OIG has also withheld the audit guide from us as well as the source documentation supporting the audit criteria which have been applied here. Instead your staff has inappropriately suggested that we submit a Freedom of Information Act request for this basic information. Nonetheless, we have attempted to evaluate the audit findings and respond to them.

The OIG Audit Was Prohibited by Federal Law

When welfare reform was enacted into law in 1996, Congress provided Federal agencies with instructions for winding up the outstanding accounts related to the repealed Title IV-A programs including Emergency Assistance (EA). Section 116 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) explicitly stated that the head of each Federal agency "shall use the single audit procedure to review and resolve any claims in connection with the close out of programs" under Title IV-A. While the Single Audit Act does not limit the authority of OIG to conduct additional audits, 31 U.S.C. §7503(c), PRWORA clearly states that the closing out of accounts between the State and Federal governments is to be accomplished via the single audit procedure, not an exception to that procedure.

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Your audit was initiated almost one year after Pennsylvania's termination of its old Title IV-A program and was conducted outside of the parameters of the single audit act. It was therefore conducted in express contravention to Federal law. Moreover, as is more fully explained below, we believe that OIG applied erroneous audit criteria to determine that sample cases were in error. Accordingly, we not only reject the audit as illegal, we reject its findings as both factually and legally wrong.

OIG Applied Audit Criteria Which Was Never Communicated to the States

Federal law is clear that the propriety of expenditures made under a Federal grant-in-aid program such as EA must be judged "by the law in effect when the grants were made." Bennett v. New Jersey, 470 U.S. 632, 105 S.Ct. 1555 (1985). Under the Freedom of Information Act (FOIA), States may not be bound by Federal interpretations unless they are either published, properly indexed, or the State has "actual and timely notice of the terms thereof." 5 U.S.C. §552(a)(1). In the words of the Department of Health and Human Services' (HHS) own Departmental Appeals Board, "the State cannot be fairly held to the Agency's interpretation if the State did not receive adequate, timely notice of that interpretation in the context where there was another reasonable interpretation relied on by the State." Illinois Department of Children and Family Services, DAB No. 1335 (1992).

Under the foregoing basic principles of Federal grant law, OIG had a duty to validate the legal effectiveness of the audit criteria it applied to Pennsylvania by insuring that each criterion was both officially adopted as policy by the Administration for Children and Families (ACF) and was communicated to the States in a timely fashion. Such validation of the audit criteria is part of the basic obligations imposed by the planning, due professional care, and independence requirements of Government Audit Standards (GAS). Without such validation, OIG is not conducting a bona fide professional audit. The audit becomes a political and rhetorical document which shows only the amounts of money which might have been saved had more restrictive criteria been legally adopted and communicated to the States.

OIG did not validate the legal effectiveness of the audit criteria applied in this matter and, as a result, the audit here is not an audit at all in the professional sense of the word. As noted above, the analysis only shows the amounts of money which might have been saved had the program been run differently by ACF. This point is perhaps best illustrated by the draft report's citation to a conversation with an unidentified ACF official as the source for OIG's conclusion that "longstanding Office of Family Assistance policy required that the individual family, not the State agency, had to file an application for EA benefits and services." Draft report, p. 13. The anonymous official's interpretation plainly conflicts with the cited underlying regulation which expressly states that an application can be filed by an authorized representative or someone acting responsibly for the applicant. 45 C.F.R. §206.10(a)(1)(ii). Moreover, the anonymous official's

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interpretation has never been communicated to the States or even officially adopted by ACF. The fact that OIG cited Pennsylvania for a \$39 million overpayment based upon an interpretation which is facially inconsistent with the language of the underlying regulation, and which interpretation was provided by an ACF official whose name is not even disclosed in the report, demonstrates why we reject the findings of the OIG analysis as unreliable and wrong.

Child Did Not Live With Specified Relative

OIG concluded that Pennsylvania spent \$7 million on claims for children who did not live with specified relatives within six months of the date of application. OIG appears to have determined a case to be erroneous whenever the child was in residential care more than six months prior to the date EA was authorized.

OIG ignored Federal policy which establishes the date of the report of abuse or neglect as the date of application for EA. A child who was living with a specified relative within six months of the date of such a report is eligible for EA regardless of the date when the EA service eligibility form was completed. Accordingly, we reject OIG's conclusion on this issue.

No Signed Application By Parent or Guardian

As noted in your report, ACF's position is that the Federal regulation at 45 C.F.R. 206.10 applies to EA. However, OIG has refused to apply that portion of the regulation which expressly states that an application may be filed by an "authorized representative" or "where the applicant is incompetent or incapacitated, someone acting responsibility for him." 45 C.F.R. §206.10(a)(1)(ii). This language plainly includes a social service agency acting on behalf of a minor child.

We are aware that certain ACF staff have recently adopted the position that an application for EA must be filed by the family, not the State. However, the position urged by ACF staff is a new one, and was never formally communicated to the States. In the early 1990s, ACF expressly approved a procedure by which the Connecticut Commissioner of the Department of Children and Families could apply on behalf of each foster child by sending a request for EA in the form of a memo. In North Carolina Department of Human Services, DAB #1631 (1997), the HHS Departmental Appeals Board noted that ACF agreed that the EA "application may be submitted by the child's parent or a responsible adult or by a social service agency acting on behalf of the child."

The right of a social service agency to sign an application for a child in the custody of the county is also confirmed in prior Departmental Appeals Board decisions. Thus, for example, in Louisiana Department of Health and Human Services, DAB No. 989 (1988) the Appeals Board

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interpreted the companion Medicaid regulation to §206.10 and stated that "it would be unreasonable to expect a very young child to sign the form, and the caseworker, representing the State, is a likely person to verify the information on the form. Neither the regulation (42 C.F.R. §435.907) nor the State plan mandate that the child or parent must sign, and there apparently is no bar to the caseworker being the sole signatory."

Parental signature requirements only make sense in the context of a child who is living in a family situation. When a child is taken into custody, the local agency acts in loco parentis and does everything the parent would do, including making application for government benefits. The OIG audit criterion of a parent signature on the EA application is not only contrary to the plain language of the regulation and ACF's prior interpretations, it also is nonsensical. The interpretation advances no sound public policy in the context of children who have been removed from the home setting.

Application/Authorization Was Backdated

DPW agrees that the dates on a substantial number of EA service eligibility forms in the OIG sample of cases were backdated. Most of the backdating resulted from the fact that Philadelphia recreated EA service eligibility forms which had been inadvertently destroyed. As noted in the audit, the backdating is obvious from the fact that the dates filled on the form predate the print date for the form. We do not believe that the backdating is an error so long as the information contained on the form accurately reflects what was done at the time.

Some of the backdating resulted from understandable caseworker confusion in implementing a Federal policy. In a memorandum to all Title IV-A State Directors dated February 14, 1994, ACF advised States that "a report of suspected abuse from a reliable source could constitute an application for EA." This policy was subsequently expanded to include reports of neglect as well as abuse. Procedures for implementing this Federal policy were never provided by ACF. Accordingly, caseworkers were understandably confused about the proper dates to be inserted on the EA service eligibility form and it appears they often backdated EA forms to reflect reports of abuse or neglect in their files.

We agree that the EA service eligibility form could have been more clearly designed and the instructions for filling it out could have been more clear. However, the Federal policy was confusing and, based on that Federal policy, the backdating of the dates on the service eligibility form was not an error.

Improper Authorization

OIG cited Pennsylvania for an error whenever there was more than a 12 month delay in

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authorizing service from the date on the application form. We agree that occasions of prolonged delay in authorizing EA are troubling. However, the Federal regulation at 206.10(a)(3) prohibited the State from denying children assistance based solely upon the agency's delay in authorization. Accordingly, the State's payment of these claims was not in error.

Service Provided Outside of the 12 Month Service Window

The draft audit claims that Federal law limited the State to a 12 month authorization period. The draft audit again cites an anonymous ACF employee for this interpretation. Draft audit, p. 20. However, ACF's formal policy was that there was no arbitrary limitation on the length of an emergency. In a memorandum dated January 5, 1993 the Director of the Office of Family Assistance stated that none of the official policy statements previously issued by ACF "establishes a specific time standard for determining when a particular type of assistance may not longer be viewed as addressing an emergency. Accordingly, a Federal determination that a proposed time limit for providing EA is too long would have to be based on a finding that the proposed duration of assistance is longer than necessary to respond to the emergency."

OIG is well aware that ACF has approved EA service authorization periods in excess of one year. In its 1995 audit report entitled "Review of Rising Costs in the Emergency Assistance Program," OIG noted that one state had been permitted to increase its eligibility period "from 6 months to as long as the emergency exists." Pennsylvania is a second State that was permitted such an expansion. Pennsylvania's approved State plan states in highlighted underlined language that "services will be provided until the emergency condition is alleviated."

Pennsylvania's approved State plan language expressly permits service authorization periods in excess of one year. Consistent with its view that no arbitrary limitation could be imposed upon authorization periods, ACF approved that language. It is both unfair and unlawful for OIG to retroactively impose an arbitrary 12 month limit in its audit criteria.

Unrelated Claims Within 12 Months

OIG cited Pennsylvania for over \$9 million in errors arising out of unrelated EA claims within a single twelve month authorization period. Pennsylvania rejects this audit finding because it is again based upon a clear misapplication of Federal policy.

Pennsylvania's approved State plan provided for a single authorization of a continuum of EA services. This approach was expressly approved by ACF. In a policy clarification dated August 24, 1994, the Director of the Office of Family Assistance specifically advised that New Jersey's provision of juvenile detention care or foster care following failed preventive family preservation services did not violate the single authorization requirement of Federal law. The Director noted

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that "the precedent for this type of authorization is the current practice of many States in authorization EA for very general family preservation and reunification services."

OIG misapplied Federal policy by ignoring the continuum of services concept. OIG appears to have erroneously treated each new service, each break in service, and each new arrest as ending the prior authorization period. Accordingly, we reject the audit finding on this issue.

EA Supplemented Another Federal Program

The draft audit cited Pennsylvania for an error whenever a child receiving EA also received Title IV-E assistance. The audit finding is wrong. ACF policy has long permitted the dual receipt of benefits under EA and other programs so long as there is no duplication of coverage. In a memorandum dated February 14, 1992 addressing this issue, the Director of the Office of Family Assistance advised that EA was not intended to duplicate assistance to meet the "identical needs" addressed by other public assistance programs.

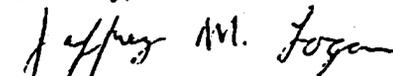
EA did not duplicate the "identical needs" of Title IV-E recipients. Accordingly, Pennsylvania was permitted to utilize EA to supplement benefits for Title IV-E eligible children.

Remaining Errors

We are unable to comment on the remaining errors because they relate to individual sample cases.

We thank you for the opportunity to comment on your draft audit. We hope you will take these comments into consideration and revise your audit recommendation appropriately. Best wishes.

Sincerely,



Jeffrey M. Logan

Attachments